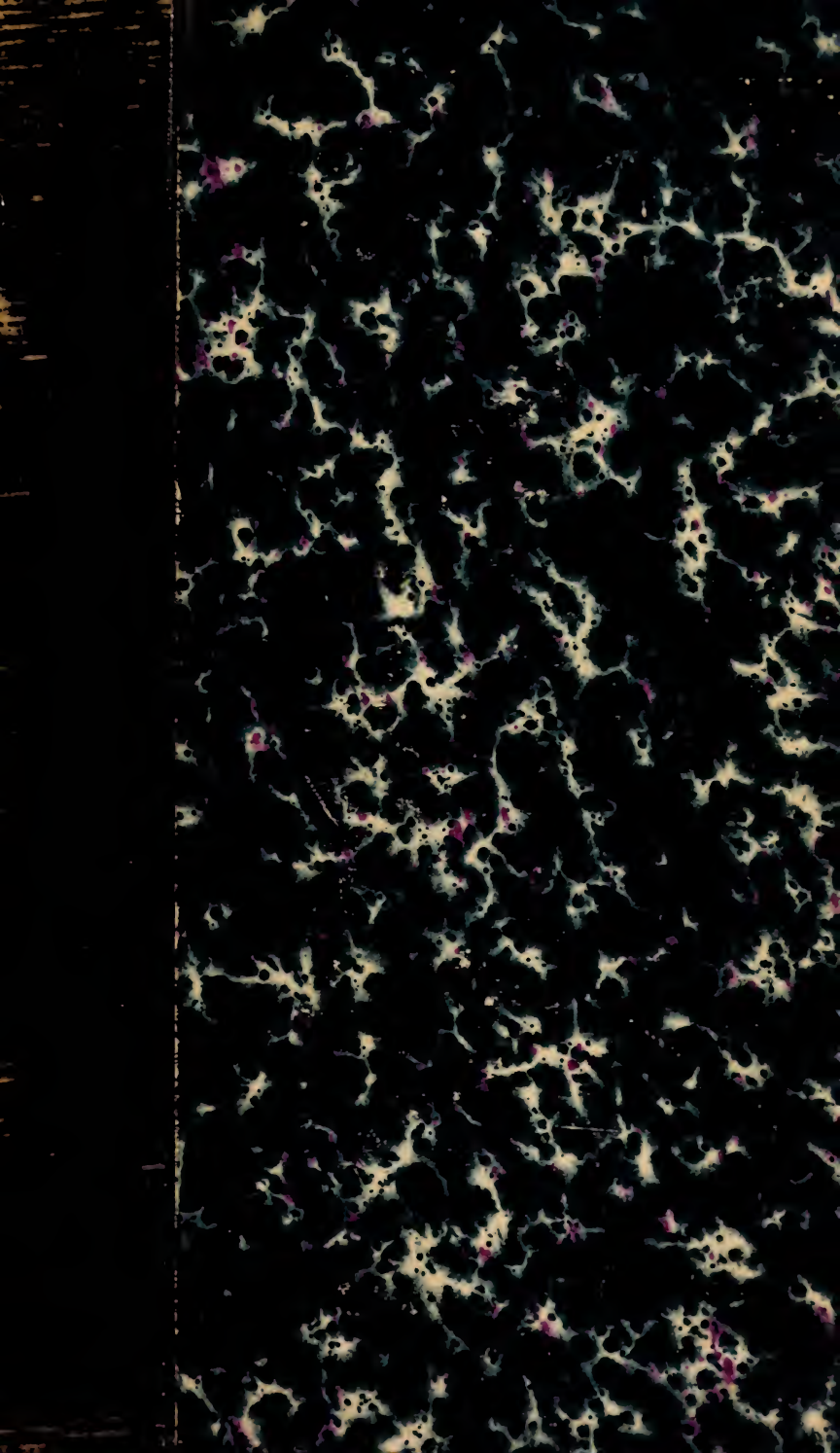


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SEYMOUR DURST

FORT NEW AMSTERDAM (NEW YORK), 1651

When you leave, please leave this book
Because it has been said
"Ever'thing comes t' him who waits
Except a loaned book."

ANNALS

OF THE

CORPORATION,

RELATIVE TO THE LATE

Contested Elections;

WITH

STRICTURES

UPON THE

CONDUCT OF THE MAJORITY.

IN SEVEN NUMBERS.

By LYSANDER.

Do nothing wrong—nor bear it.—EURIPIDES.

—*NEW-YORK*:—

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1802.

Annals, &c.

No. I.

To the late MAJORITY *in the* COMMON COUNCIL.

Let Envy in a whirlwind's bosom hurl'd,
Outrageous search the corners of the world,
Ransack the present times—look back to past,
Rip up the future, and confess at last
No times, past, present, or to come, could e'er
Produce, and bless the world, with such a pair.

CHURCHILL.

I SHALL not, Gentlemen, apologize to you for the delay of a publication, with which you could have readily dispensed.

Engagements more necessary to myself, prevented an earlier attention to your merits. The fame you have acquired is scarcely susceptible of addition from the feeble pencil of a historian.

Should I compliment you with the possession of talents or public virtue, it would be a sacrifice of sincerity to politeness. The language of panegyric would be an insult to the sensibility of your feelings. Even the Philips of your body would view it as the hidden sting of irony, or the satire of burlesque.

The acquirement of a public station is the greatest injury which a weak man can experience from Fortune.

Nature had calculated you to glide along the ſtream of private life, with eaſy and undiſtinguiſhed inſignificance. You might even have continued reſpectable in a ſtate of happy obſcurity. Unfortunately for yourſelves you have been actors upon a ſtage, without capacity to execute the parts you were called upon to perform. Bewildered and perplexed, enveloped in a labyrinth, loſt in confuſion, and ignorant of your characters, you had but too much reaſon to lament the abſence of your prompter.

You have undertaken the deciſion of queſtions, to which you are incompetent.

You have uſurped the province of judges upon ſubjects you do not underſtand—with temerity you have deprived your country of its moſt valuable rights. It will be fortunate for yourſelves if you can reſort for refuge to the plea of indiſcretion.

In the calmneſs of reflection you will acknowledge that I have treated you with delicacy and indulgence. With a field ſo ample before me, had I given way to ridicule and invective, even my limited powers could have placed your feelings upon the rack.

I claim no little merit for the exerciſe of clemency.—You have been the authors and performers of the drama. If you have rendered yourſelves contemptible or criminal, the fault is your own. Your misfortunes or your vices are not attributable to Lysander.

A city deprived of its freemen by the intrigues and conſpiracy of its magiſtrates—Electors deſpoiled of their ſuffrages by the arbitrary deciſion of an intereſted tribunal. An election defeated by violence and uſurpation, public officers openly deſerting their poſts of duty, and leaving

a community to its fate. Our police and inſtitutions ſuſpended by raſhneſs and petulancy. Our poor dependent upon voluntary contribution. Our watch maintained by individual patriotiſm. Our lives and property expoſed to the attacks of midnight depredation, had it not been for the interpoſing hand of republican virtue. Such is a ſummary and imperfect picture of madneſs, diſappointment and deſperation. You, Gentlemen, have taught us an important leſſon. You have convinced us how little the tranquility of a great and populous city depends upon magiſtrates like yourſelves.

We have approached a criſis which demands, and truſt me ſhall obtain, a radical remedy. Our rights are too ineſtimable to be placed within the controul of any future corporation. It is not the ſeat of an alderman, but the eternal privileges of the people, which are at ſtake, nor ſhall we be ſatisfied with trivial, momentary, and temporizing meaſures. The rights of a magiſtrate may be ſettled by the intervention of a court of juſtice. Thoſe of the inhabitants can only be reſtored by the ſuperior interpoſition of the Legiſlature. Such then ſhould be the perſevering efforts of patriotiſm. We muſt not relax in our endeavours until the rights of the people are eſtabliſhed upon a firm, ſubſtantial, and unperiſhable foundation.

LYSANDER.

No. II.

INTRODUCTORY OBSERVATIONS.

"In times of public danger, it is every man's duty to withdraw his thoughts in some measure from his private interest, and employ part of his time for the general welfare." IDLER.

THE primary object of every political eſtabliſhment, ſhould be to promote the general welfare of the people. The police of cities as well as the government of ſtates, is intended to preſerve the eſſential intereſts of the public. Whenever we ſpeak of the rights and the powers of a corporation, it is proper to enquire who are the parties that compoſe it? and what are the purpoſes for which it was eſtabliſhed?

If it ſhould be contended that the preſent Charter of this City was intended for the benefit of the members of the Common Council, in oppoſition to the priveleges of the citizen. Should it be maintained that this Royal grant, is the excluſive property of the aldermen and aſſiſtants, in derogation of the rights and liberties of the inhabitants.—Then it would be time that the interpoſing hand of public juſtice ſhould be extended to demoliſh the fatal inſtrument of ſlavery and diſgrace.

The preſent Charter was derived from the ſucceſſive grants of former ſovereigns. It was penned at periods, in which the rights of the people were imperfectly underſtood and eſtabliſhed. To promote the authority of the Monarch, and to guard the high prerogatives of his throne was the primary object of government throughout every

department of the empire. It is incompatible with the intereſts of royalty, that the inſtitutions of civil freedom ſhould exiſt within any department of its dominions. The power of the prince muſt neceſſarily be ſupported by the influence of his vicegerents. It muſt be fortified and protected by the ſubordinate dominion of ſatellite authority. Hence it is that in our civil inſtitutions we ſtill perceive ſome glaring characters of ariſtocracy, and are yet ſubjected to ſome remains of the ancient policy, inconſiſtent with the ſpirit, the principles and the genius of our government.

It is a matter of aſtoniſhment, that a city ſo enlightened, and which has ſo eminently contributed to the reſtoration of public liberty, ſhould have ſo long ſubmitted to the abuſes of its municipal adminiſtration. When we view the men who compoſe the majority of the Common Council. When we conſider the ſlenderneſs of their influence as individuals. When we contemplate the paucity of their talents, we are impreſſed with mingled emotions of ſurpriſe and indignation, that men ſo deſtitute of learning, ſhould have been permitted to become with impunity the deſpoilers of the rights of their fellow-citizens.

The mal-adminiſtration of our City-police, was unqueſtionably a part of a more general and complicated ſyſtem. The ſame policy which attempted the creation of armies—the multiplication of taxes, and prodigality of expenditures, in the national government, dictated preciſely the ſame meaſures with reſpect to our internal adminiſtration. In the purſuit of this plan, it was neceſſary that their favorite inſtruments ſhould be rewarded, and that the influence of the Commonalty ſhould be compleatly aboliſhed. Offices and emoluments were heaped upon the needy or avaricious members of the board, and there is but

too much reaſon to believe, that they were originally created to reward the demerits of political infidelity. The dignity of the magiſtracy was degraded, and our principal civil officers converted into contractors for jobs. The character of an alderman was lost in that of a dock maſter, or ſuperintendant of ſcavengers; and the name of aſſiſtant, confounded with ſome ſervile and petty employment. Such was the univerſal practice of the Common Council, in the donation of its offices—a practice engendered in corruption—It was continued without a ſenſe of decency or a feeling of ſhame.

The adminiſtration of the late Mayor, was uniformly exerted to the deſtruction of every popular principle in our charter. Had it not been for the happy change which has taken place in the affairs of the United States, there is too much probability that his deſigns would have ſucceeded.

By the Charter of the City, as it at preſent ſtands, the inhabitants poſſeſſed of corporate rights, are divided into freeholders and freemen. In them the eſſential rights of the body politic are centered. They are the fountain from whence the government of the city, agreeably to its incorporation, ſhould in reality be derived. Every other individual muſt be conſidered as a ſojourner or temporary reſident. For, except in times of public fairs, no other perſon can legally exerciſe his trade or occupation, within the limits of the town. Whatever may have been the original policy of impoſing this reſtriction—However it may have been intended to narrow the privileges of citizenſhip, it is obvious that the terms of the charter lead to the alternative, either, that a ſufficient number of freecitizens muſt be appointed, or that the buſineſs of the city muſt be at an end.

It is alſo directed that the election of Charter Officers ſhall be made by the freemen of the city, being inhabitants, and the freeholders of the reſpective wards. To be a freeholder or a freeman, is therefore a neceſſary pre-requiſite to entitle an individual to the elective franchiſe. An act of the legiſlature has altered the former qualification from a freehold generally, to one of twenty pounds. With a view to continue his own creatures into office, and knowing that the ſtrong current of popular ſentiment, was directed againſt him. In an early part of his adminiſtration, Mr. Varick made his daring and deſperate effort to deſtroy the whole body of freemen, and to place the powers of the city excluſively in the hands of the freeholders. Accordingly we find that ſince the year 1792, no more than fifty four freemen have been appointed. Many of them his friends, and moſt of them only for the purpoſe of being qualified to hold particular offices. This extraordinary circumſtance is matter of record, and placed above the reach of controverſy. So completely did this wonderful man ſucceed in his project, that in a city, which boaſts its 60,000 inhabitants, ſcarcely 300 freemen can be found.

In the accompliſhment of this taſk, an obſtacle was preſented, which could only have been overcome by the moſt ſurpriſing ſagacity, or perhaps overlooked by the moſt egregious ſtupidity. The charter had directed that no man ſhould purſue his occupation without firſt obtaining the freedom of the city. Its terms are poſitive and directory. It leaves the Chief Magiſtrate no diſcretionary powers. Mr. Varick, in his magiſterial capacity, found it neceſſary to grant licences to cartmen, and to the keepers of inns. This conſummate politician, in violation of the charter, with his uſual conſiſtency, gave the licences—received the fees—permitted the men to follow their oc-

cupations, and moſt ſtrenuouſly refuſed them the hallowed gift of freedom. *

So bold and flagrant a violation of public rights, is ſcarcely to be paralleled in the annals of hiſtory. In the courſe of a few years it produced a total revolution in the nature of our government. The whole body of freemen who were intended to compoſe a principal conſtituent part of the incorporation, are almoſt extinct, and in a little time the hand of death muſt terminate the exiſtence of the remainder. This maſter ſtroke of policy was intended to eſtabliſh a ſyſtem of tyranny, and by depriving the great body of the people of their ſhare in the repreſentation, to ſubject them to the arbitrary dominion of the Common Council.

The right of being repreſented in the body by whoſe laws we are bound conſtitutes our moſt valuable and eſſential political privilege. It is the key ſtone in the arch of public liberty upon which the ſafety and exiſtence of the fabric depends. Taxation without repreſentation is the grea teſt badge of ſlavery; and he who ſubmits to it muſt forfeit

* The jealousy of our late Mayor towards the Cartmen of this City was notorious. That respectable body of men have acquired immortal honor from their general patriotism and independence—I speak not to flatter them—let them wear the laurels they have won—I feel towards them, and therefore shall express the most sincere respect—Wherever I can advocate their rights, gratitude shall prompt me to do it. I feel that the possession of my own has been in a great measure owing to their exertions. Withholding from them the freedom of the city was occasioned by the most tyrannical and illiberal policy. Like the conduct of the British merchants in refusing to give them employ, unless they voted against their own principles, it was intended to enslave them. It deprived them not only of the privileges, but also of the station of citizens. It was an innovation. It was a violation of the charter which originated with Mr. Varick. Mr. Duane and all preceding mayors, had usually conferred upon them the freedom of the city; and justly considered themselves bound to do so. The city records prove the fact. From —— 1783 to 1792—688 freemen were appointed, of whom 398 were cartmen. From March 1792 to the present time, only 54 (amongst whom there is not a single cartman) have been made. The conclusions from such a fact are too strong, and obvious to require comment. LYSANDER.

his pretenſions to the enjoyment of civil freedom. It was for the eſtabliſhment of this ineſtimable principle that we reſiſted the power of Britain, and encountered the perils of a ſevere and arduous conteſt. In this revolution we happily ſucceeded, and laid the ſtrong foundation of a government of repreſentation. Shall it then be ſaid that thoſe who are competent to the choice of the rulers of an empire are incapable to elect the ſubordinate members of a corporation? Muſt it be recorded in our future annals, that the men who withſtood the fleets and armies of a powerful monarch were compelled at length to bend beneath the yoke of a board of aldermen? Enjoying the full poſſeſſion of freedom with reſpect to our national inſtitutions. Are we to ſink into the abject condition of ſlaves, with regard to our city adminiſtration?

Defeated in every other quarter, and driven from every other reſource, that party which has hitherto been falſely denominated federal, were determined at all hazard, and by every act of fraud to retain poſſeſſion of the government of the city.

Although the late election for governor had abundantly demonſtrated that the republicans poſſeſs a majority of freehold votes, yet it was fondly imagined that the influence and property of the Engliſh merchants would enable thoſe *ſelf ſtyled federaliſts* to retain their aſcendancy. For a number of years our commerce has been principally engroſſed by Britiſh ſubjects. Enjoying our ſpoils, largely partaking of our riches, and retaining their loyalty to their ſovereign. They have been uniform and active inſtruments in the hands of ambition. United to the federaliſts by a ſimilarity of views and identity of principles. The tories of the old ſchool united with thoſe of the new, to effect the total ſubverſion of our republican inſtitutions.

In the profecution of their deſigns the tory coalition eſtabliſhed the poſition as a principal article of their creed, that property and not individuals ſhould be repreſented.

Blindly attached to the fancied privileges of a lifeleſs ſod, they forgot that man, for whom the God of Nature made the Univerſe, received ſuperior rights from heaven. Mr. Varick, whoſe religion was confined to the protection of the rights of property, without deigning to notice the privileges of a being formed after the expreſs image of his maker, had already extinguiſhed the whole body of freemen. It only remained to marſhal the privileged order of freeholders in array. The playful proprietors of the theatre, and the bacchanalian owners of the Belvidere, preſented a principal column of the phalanx—fraught with madneſs and deſpair, they reſolutely reſolved to withhold the government of the city from the hands of the odious republicans.

When from their plan of operations, it was diſcovered that they had formed a ſettled intention, by annihilating freemen, and rendering the eſtates, and not the perſons of men, the baſis of repreſentation, to wreſt from the people their rights of election. To counteract thoſe deſigns, it became neceſſary for the republicans to oppoſe them with their own weapons. The law had declared that every man, poſſeſſed of a freehold to the amount of twenty pounds free of incumbrances, ſhall be entitled to vote for charter officers. Nothing more was requiſite, than, that a ſufficient number of individuals ſhould poſſeſs themſelves of an eſtate to that value, in conformity to the terms of the law. Accordingly an aſſociation of reſpectable citizens was formed for the laudable purpoſe of reſiſting the oppreſſion we had ſo long experienced; reſtoring the neceſſary body of freemen, and re-eſtabliſhing the ancient rights of the

city. The result of this memorable election is well known. We beheld an event which promised the most auspicious consequences. The hopes and expectations of the public were on the eve of being realised. A republican magistracy would have ensured the correction of abuses—restored the rights of the community—placed the elective franchise upon a firm, liberal and constitutional basis; and finally promoted the liberties and prosperity of the city.

LYSANDER.

No. III.

ON THE RIGHT OF SCRUTINY.

———Their "better part remains
"To work in close design, by fraud or guile
"What force effected not."

MILTON.

IN public as well as private affairs it generally happens that the commiſſion of one crime leads to the perpetration of another. Unable to prevent the election of a majority of republican magiſtrates, the federal members of the Common Council were determined to defeat it by a raſh and deſperate interpoſition of power.

In the receſſes of hearts capable of deſperate deſigns, they immediately reſolved upon the exerciſe of a power, of all others the moſt dangerous and the moſt liable to abuſe. This they term the right of *ſcrutinizing* into the votes; receiving and rejecting them at their pleaſure, and thereby terminating the election in favor of any candidate whom they may prefer.

It is eaſy to perceive the conſequences reſulting from ſuch an exerciſe of authority. It renders elections in a great meaſure nugatory, and enables the majority of any public body, by ſtratagem, intrigue and agreement, to continue themſelves in office as long as they think proper.

That ſuch a right is recogniſed by the charter is altogether denied. But ſhould it even be maintainable, it is ſo repugnant to the principles of our government, and pro-

ductive of such dangerous evils as to require an immediate repeal.

The clause in the charter from which this singular claim has been derived, declares that the Common Council of the city for the time being, or the major part of them shall have the sole power of determining and deciding all elections of all and every *their officers* and *ministers*, thereafter to be chosen and elected in or for the said corporation or any part thereof.

With respect to this clause, it is to be observed that on account of the high importance and dangerous tendency of the powers to which it is supposed to give rise, it should not by any force of construction, be carried to an extent beyond the precise import of the terms it employs.

In the first place it is observable that the expressions contained in it are "*officers and ministers.*" It is entirely silent with regard to *members.*

Now it is plain that the grant of a power to determine the appointment or election of a subordinate officer or minister cannot *ex vi termini* apply to the member of a public body. It is a general rule in law applicable to the interpretation of all statutes, that a statute which treats of things or persons of an inferior rank, cannot by any general words be extended to those of a superior. The example given by Blackstone clearly elucidates the position. Thus a statute treating of Deans, Prebendaries, and others having spiritual promotion is held not to extend to Bishops, though they have spiritual promotion. Deans being the highest persons named, and Bishops being of a still higher order.

The case given by Blackstone in illustration of his rule, is infinitely stronger than the clause under discussion.

That caſe contains general terms, which might include ev-ery order of the clergy, (the deſcription of perſons named.) Yet it was decided that biſhops being ſuperior to deans, were not included in the generality of the terms. The charter only ſpeaks of miniſters and officers of the Common Council. Without containing any general expreſſion, which could be conſtrued to extend to the members of that body.

That a clear diſtinction exiſts between the officers and the members of a council, common ſenſe itſelf would dictate. Yet, if it is neceſſary to cite authorities, the ſceptic is referred to Kyd, on Corporations—to the ſupplement to Viner---and even to a clauſe in the charter itſelf, directly following that, from which the extraordinary prerogative in queſtion is claimed, which clearly diſtinguiſhes an officer from a member of the corporation.

I am aware it will be contended, that an alderman is a *public officer* as well as a *member* of the Common Council, and that becauſe he is an *officer*, he is included within the terms of the charter. But let it be replied, that his being a public officer is not ſufficient to bring him within thoſe terms---he muſt be an officer *of* the Common Council; that is to ſay, an officer in immediate relation to that body. Examine the clauſe, it contains the relative expreſſion "*their*," that expreſſion is emphatical, and governs the conſtruction of the ſentence---a right is thereby veſted in the Common Council to decide upon the election of *their* officers and miniſters---an alderman is not an officer or a miniſter *of that board*---On the contrary, he preſides in, and is a *member* of it. That body is compoſed of aldermen and aſſiſtants. Will you be guilty of the abſurdity of terming them their own officers? In relation to the Common Council, an alderman is neither an officer or a miniſter. When

he is an officer, as in his capacity of juſtice of the peace, he is an officer of the ſtate, and not of the Common Council. He maintains his ſeat in that body as a ſuperior preſiding member, and is above the reach of the expreſſions contained in the charter.

It is remarkable that the charter itſelf, when it ſpeaks of an alderman as a public officer, is moſt emphatically expreſſive upon this point. In appointing him a juſtice of the peace, and inveſting him with judicial authority, it ſtyles him, in poſitive language, a juſtice of us, our heirs, and ſucceſſors. Before the revolution he was an officer of the crown. Since that auſpicious period he is an officer of the people. With relation to the Common Council, he is a member, and not an officer: he is not comprehended within the terms of the controverted clauſe.

It has, indeed, been contended, that this power of ſcrutiny does not depend upon the proviſions of the charter, but that it is an authority incident to all corporations, inaſmuch as every corporate or political body is entitled to create bye-laws for its own internal regulations.

In reply to this obſervation let it be remarked, that ſuch argument does not apply to the preſent caſe, for the very obvious reaſon, that our Common Council has never thought proper to conſtitute ſuch bye-law. If a bye-law to that effect had been made, its authority would have been queſtioned—but, as ſuch ordinance has never been paſſed, ſhould we even admit the authority. Still it has remained latent and inchoate, becauſe the proper meaſures have not been taken to afford it an effectual operation.

With regard to this general power of framing bye-laws it is to be obſerved, that it is expreſsly provided by the

charter, that such bye-laws shall not be repugnant to the laws or statutes of England, or of the ancient colony. Yet this provision, though expressly made, was altogether unnecessary; for it is not to be denied, that these inferior governments must always remain subordinate to the superior authority by which they are created. It is, therefore, a positive rule, to be gathered from our legal writers, that every bye-law contrary to the general laws of the land is void; and I shall not hesitate to superadd the position, that no bye-law is obligatory which is repugnant to the spirit, the genius, or the principles of the constitution of a state.

Whatever may be the accordance in those rules which direct the private concerns of men, the principles of our *political law* are extremely variant from those of England. Our system of national polity is essentially different from that of a community whose constitution recognizes the existence, and embraces the interests, of different orders of men. The general tendency of all the English institutions is, to support the powers of the throne, and to protect the privileges of the nobility—The stream of royalty flows and circulates throughout every department of society. Hence it follows, that their corporate establishments have been modelled as miniatures of their general government, and that the regulations of the former have resembled the features and partaken of the qualities of the latter.

Our political institutions only acknowledge two leading and primary objects—the maintenance of social order, and the preservation of the rights of the people. Whatever establishment has a tendency to increase the powers of one part of the community, at the expence of the interests of another, is contrary to the nature of our civil constitutions, and repugnant to the principles of our revolution. Hence then, it is necessary that the operation of every foreign

eſtabliſhment ſhould be cautiouſly examined before it is naturalized here. Whatever inſtitution is uncongenial with our general ſyſtem of policy muſt be rejected, whether it obtains in England or any other country on the globe.

I have made theſe obſervations to ſhew the manifeſt impropriety that would reſult from an indiſcriminate admiſſion of Britiſh principles. It is poſitively denied, that the pretended right of ſcrutiny is appurtenant to corporations by the general laws of England. That country abounds with incorporated bodies, inſtituted for a variety of purpoſes—ſome political—ſome commercial—ſome religious—ſome literary—others again for carrying particular charities into effect. The powers of each depending upon its general nature, or ſpecific end, and more upon the particular grant, from which it derives its ordination, than from the general proviſions of law.

Again, among the infinitude of corporations, ſome exiſt by preſcription, and ſome are founded in written charters. In the one caſe, they are governed by a continued ſeries of uſage. In the other by the interpretation of the language of their charters. Amidſt the extenſive field of legal contention, which has been opened upon the ſubject of corporate bodies, not one ſolitary inſtance can be found of an Engliſh corporation claiming a right of ſcrutiny, parallel to that which has been exerciſed by our Common Council. All the books and reporters are ſilent upon that point. From that ſilence ſome have inferred that it has never been diſputed; upon that very ground, I maintain it has never been exerciſed—for if the right had been univerſally admitted, ſtill, in the progreſs of ſo many years, queſtions would have ariſen with reſpect to the manner of its exerciſe, and preſented themſelves to the court of King's Bench, in the ſhape of abuſes.

Can it then be poſſible, that a right ſo extraordinary in its nature, ſo dangerous in its conſequences, ſo repugnant to the principles of our government---an authority which ſtrikes at the very root of the elective franchiſe and places the people completely beneath the arbitrary controul of a board of aldermen and aſſiſtants, can be created and guaranteed by the common law of the land? Is a power ſo exorbitant and gigantic to be exerciſed upon the moſt trivial and queſtionable ground? Are all our boaſted privileges held at the precarious mercy of a Common Council? and all the inhabitants of a great, enlightened and reſpectable city reduced to abject ſlavery by a little handful of undiſtinguiſhed citizens.

There is ſtill a remaining view in which I ſhall conſider the ſubject. I produce the ſenſe of the legiſlature againſt the atrocious and unprincipled uſurpation. Even before the revolution, an act of the colony was paſſed for the regulation of charter elections. Under our preſent eſtabliſhment the legiſlature has provided a ſtatute moſt expreſsly and avowedly for that purpoſe. Examine the title; you find it to be "an act to regulate the election of charter officers in the city of New-York." Inſpect, analyſe, ponder upon its contents; you perceive it to comprehend every ſuitable and every eſſential proviſion.

I contend that by this act the ſenſe of the legiſlature is explicitly declared, and that it follows as a neceſſary concluſion, either that ſuch a power never exiſted, or if it did obtain, that it was thereby repealed; the intention of the legiſlature is apparent from the title of the act, and from the proviſions which they have thought proper to eſtabliſh, if it had been believed that the authority in queſtion was veſted in the corporation; and it was ſafe to entruſt it to their hands. The legiſlature could have had no rational inducement for an interference upon the occaſion. If the regulation

of charter elections was conſidered as the peculiar province of the Common Council, and as a right veſted in them by the charter, why was a ſolemn and deliberate ſtatute paſſed expreſsly and excluſively for that purpoſe?

Moſt expreſs and poſitive language could not have more clearly unfolded the views of the legiſlature upon the ſubject, than their very act of interpoſing upon the occaſion.

Upon a peruſal of this ſtatute it will be found to contain every proviſion which could have been deemed neceſſary for the regulation of charter elections. It aſcertains the time at which they are to take place. It directs the mode of conducting them. It preſcribes the officer who is to preſide. It eſtabliſhes his powers and his duties. It declares the qualifications to be poſſeſſed by the electors. It renders them eſſentially variant from the proviſions contained in the charter. It adopts a mode for deciding upon thoſe qualifications; and it even directs the particular duties of the Common Council upon the occaſion.

Before the *enaction* of this ſtatute, our city elections took place entirely under the operation of the charter; but ſince that period they are governed by the particular directions of this law. A remarkable expreſſion of the legiſlature forcibly indicative of their intentions upon this point, appears to have been overlooked. The ſtatute under contemplation provides that if the Common Council ſhall not appoint inſpectors, or if thoſe inſpectors ſhall neglect the performance of their duties, that then, and then only, *elections ſhall be had according to the directions in the charter, any thing in that act contained to the contrary notwithſtanding.* Is it not therefore manifeſt, that the legiſlature muſt have conſidered that law as the only baſis upon which the election of charter officers was thereafter to be founded? Upon no contrary doctrine is it poſſible to account for their cautious ſolicitude in

providing againſt thoſe two particular neglects of duty. By that ſtatute they eſtabliſh a general rule—they render thoſe peculiar caſes an exception to that rule. Why did they ſo carefully provide that in thoſe ſolitary inſtances, elections ſhould take place in purſuance of the charter, if in every other reſpect, they did not view the charter as giving way to the ſtatute?

Let us now beſtow ſome particular attention upon the act, and examine the regulations it has eſtabliſhed.

In the firſt place it authorizes and directs the Common Council within certain limits of time to *fix upon the places of election*, it alſo directs them to appoint inſpectors, and preſcribes their requiſite qualifications---here then we find the legiſlature exerciſing their controul over the Common Council, and it is apparent that this body with reſpect to Elections, muſt act in *ſubſerviency* to the law.

In the ſecond place, it preſcribes the powers and duties of inſpectors; and here let me impreſs the obſervation, that thoſe officers are directed and empowered to *preſide at* elections, as well as to make returns. The expreſſion of the act with reſpect to the appointment of this officer are worthy of cloſe and particular attention. A fit and diſcreet perſon (ſays the law) for each reſpective ward, being a freeholder there or a freeman of the ſaid city, ſhall be appointed to *preſide* at, AND be the inſpector or returniog officer, to ſee that the reſpective elections be fairly conducted and had. Here, then, it is apparent that the act has preſcribed for ſuch officer a twofold diviſion of powers and of duties, each ſeparate in its nature, and clearly diſtinguiſhable from the other. The grammatical conſtruction as well as the obvious import of the ſentence is too apparent to require argumentative deduction, the conjunction *et* (and) placed between its branches preciſely indi-

eates their ſeparate exiſtence, and gives to each its ſpecified operation. The perſon ſo appointed is to PRESIDE at elections, *and* he is *alſo* to be the inſpector or returning officer.

He is to preſide at, and to ſee that the reſpective elections are fairly had and conducted. The term preſide, derived from the latin *præsideo* ſignifies being ſet, or having authority over. When it is directed that an individual is to preſide with reſpect to a ſubject matter, the true meaning of the expreſſion is, that he poſſeſſes authority over it; it is implied that he ſhall govern and direct, agreeable to the ſpirit and intent of the power from whence he derives his ordination. He who is to preſide, and ſee that elections are fairly conducted, is rendered the principal officer, with reſpect to thoſe elections.

I place peculiar ſtreſs upon this argument, becauſe I am convinced it is concluſive, the law has placed a very important power in the hands of this officer. It has directed him to preſide at, and ſee that elections are fairly and properly conducted, and it looks to him, and to him alone for the faithful performance of thoſe duties. The law was made for the ſole purpoſe of regulating the election of charter officers. Its excluſive intention was to place thoſe elections upon a wiſe, ſecure and ſalutary foundation. It was neceſſary that this preſidential power ſhould be intruſted ſomewhere. It was indiſpenſible that ſome individual ſhould be appointed to prevent thoſe who were not legally qualified from being admitted as electors. It was politic that ſuch power ſhould be depoſited in hands the leaſt likely to abuſe it. Every principle of public juſtice and policy dictated that this preſiding officer ſitting as the judge of elective qualifications, ſhould be diſintereſted and impartial. It was eaſy to perceive that the mem-

bers of a corporation, frequently candidates themſelves, were not diſpaſſionate judges. It muſt have been perceived that ſuch authority placed in their hand was dangerous, and liable to irreſiſtible temptations. It was unſpeakably evident that armed with ſuch powers, they could at pleaſure defeat every election, and render their offices of unlimited duration. Hence, then, it was neceſſary that the legiſlature ſhould interpoſe its aid, and provide ſome ſuitable guard to preſerve the privileges of the citizen.

Thirdly. The law preſcribes the qualifications of electors, and directs the mode of determining them. With reſpect to the firſt point, as before obſerved, it is variant from the charter by reſtricting the right of voting to a freehold of twenty pounds. The particular manner in which the act is drawn, its embracing every qualification and inſtituting a complete and comprehenſive ſyſtem, is alſo a ſtrong argument that the legiſlature intended the ſtatute ſhould ſupercede the charter with reſpect to elections.

The method which the legiſlature has adopted, for deciding upon the qualification of electors, is another ſtrong link in the chain of argument, to prove, that they intended that act to conſtitute the only inſtrument for governing elections. We have ſeen the high importance of the office of inſpector, its extenſive duties, and the confidence repoſed in it by law. In order to prevent corruption and intrigue, to ſupercede the exerciſe of an arbitrary diſcretion, and to protect the right of electors, the law has interpoſed a ſingle mode of trial, the one moſt ſuitable to the occaſion, and perhaps the only practicable method—That is the oath of the party, in the words adopted by the law, comprehending every requiſite, and which is to be adminiſtered by the preſiding officer.—When we conſider the inconveniences, the difficulties,

and the delays of every other mode; the numberleſs queſtions that would neceſſarily ariſe; the extreme intricacy and technical nature of many of thoſe queſtions; the time which would unavoidably be conſumed in their diſcuſſion; the production of title-deeds; the expoſure of eſtates; the examination of witneſſes; the incompetency of every tribunal except the regular courts of juſtice; the unwillingneſs of electors to expoſe themſelves to ſo much trouble and inconvenience; that it would render elections an endleſs field of litigation;—when we conſider the abuſes to which any other method of deciſion would give riſe;—when we reflect upon the inſuperable difficulties which would attend every election;—when we contemplate the highly dangerous powers which would reſult from this extraordinary right of ſcrutiny;—and, when we perceive that the preſent conſtruction of the act, places the elections of our city magiſtrates upon preciſely the ſame footing with thoſe of the officers of ſtate—the concluſion is unavoidable, that ſuch interpretation is juſt—That the deciſion of the inſpector, in his preſidential capacity, and his records, tranſmitted in the character of returning officer, is final and concluſive with reſpect to the rights of the party elected.

Should we reſort to arguments of convenience or expediency, the ſubject would become inexhauſtible. Many of thoſe arguments are forcibly ſtated in the proteſt of the minority of the Common Council, which is incorporated in the pages of this work. To that proteſt I therefore take the liberty of referring the reader.

Before I conclude the preſent number, permit me to enforce the danger which would reſult from allowing the corporation to aſſume the right of deciding the value of freeholds. Between certain limits that value is indefinite. From the unalterable nature of things, it muſt reſt

entirely in conjectural opinion. It is not the ſubject of definite evidence, nor is it ſuſceptible of preciſe judicial determination. Such a right, if exerciſed, would be liable to perpetual abuſe. Corrupt, fraudulent, and partial deciſions would be made without the means of redreſs, without the poſſibility of appeal.—I purchaſe a freehold for the price of twenty pounds. The contract is an actual one. The conſideration was fairly paid. The payment of ſuch conſideration is concluſive evidence of value—it is the very ſtrongeſt teſtimony of which the caſe is ſuſceptible. It would be apparent, that the value of my freehold was not £. 1000. It would be equally apparent, that it was more than twenty ſhillings. But between fifteen and thirty pounds, the line of value would be fluctuating, indiſtinct, and evaneſcent. Some men would compute it at one price, others at a different. Who is then to decide that inviſible point of eſtimation between the hair-breadth of a fraction, whether it is worth the preciſe ſum of twenty pounds, entitling me to a vote, or the infiniteſimal particle of an atom leſs than ſuch ſum, depriving me of the right? Shall the corporation be permitted to tell me—"We, Sir, are the judges. We are determined to eſtimate your property at the ſum of forty-nine dollars and ninety-nine cents. It wants a ſingle dime, or cent, of the value to entitle you to the privileges of a citizen. It is againſt our intereſt to admit your vote. It would deſtroy the ſeat of one of our members. It would baniſh one of our favourite inſtruments of corruption. We are the judges. Our determination is concluſive. We are ſuperior to the idle tales of witneſſes. It matters nothing to us what money you have paid. We will not accept your oath, though the law has directed the inſpector to take it. We determine your property to be worth as little as we pleaſe. We repeat it—our deciſion is concluſive.

You have no appeal, no redreſs. The Supreme Court cannot direct a jury, nor ſummons witneſſes, to eſtimate this nice and delicate queſtion. We alone poſſeſs the ſtandard of abſtract truth and mathematical exactitude?"

Minute philosophers, who nicely see
Th' entrails of a gnat, dissect a flea;
Survey the world with microscopic eye,
And to an elephant convert a fly;
Measure an atom by precision's laws,
Balance the difference of a pair of straws;
Pursue the fibres of a grain of sand,
Tell how much gold will buy each inch of land;
Divide and subdivide each single hair,
With fairy magic gage a point in air.
NEWTON! look down from the empyrean skies,
Confess to Philip thou wert not so wise.
Great PROCLUS! EUCLID! from your thrones behold
What wonders rise—what sylph like pow'rs unfold!
Oh, sages! skill'd in every occult lore,
Imbued with science never taught before.
Hail! sapient owls! who know no mental night,
And loftier CHARON *, heir of second sight!
Sages renown'd! proceed with care to scan,
By geometric rules, the Rights of Man!
Explore each distant star through fancy's tube;
Fraction from fraction draw, and cube from cube;
Balance my freedom with aërial scales,
Pronounce, from mystic spells, what candidate prevails!

I aſk theſe very intelligent and ſagacious gentlemen—I enquire of them jointly and individually, from what charter—from what law—from what extraordinary proceſs of logical deduction, did you derive the ſingular privilege and miraculous faculty of analyſing, to a fraction, the preciſe value of eſtates? Surely not from the charter of the city. That inſtrument did not require any ſpecific value; it could

* The waters of the Wallabout might, in poetic language, be considered as the Styx; and the Prison-ship the bark in which Charon ferried the shades of his rebel victims.

not grant you a power which it did not contemplate—ſurely not from the ſtatute for regulating charter elections--that act eſtabliſhed a very different proviſion---it intruſted the caſe to the inſpectors and required them to receive the oath of the electors as the criterion to determine it. In whatever view we conſider the ſubject ; the more it is ſubmitted to reflection, the ſtronger is our conviction that the majority of the Common Council have violently exerciſed a power to which they are not entitled---An authority which they have neither the candour to diſavow, the arguments to vindicate, nor the ingenuity to defend.

LYSANDER.

No. IV.

HISTORY OF THE SCRUTINY IN THE FIFTH WARD.

———— "Force
Usurps the throne of justice."

AKENSIDE.

INFLEXIBLY determined upon the accompliſhment of their predeſtined purpoſe, the majority of the Common Council were obſtinate and inexorable; deaf to argument and callous to the impulſe of reflexion, they ruſhed precipitately into action without conſidering the injuſtice or the impolicy of their conduct. I would willingly attribute their proceedings to the errors of the underſtanding, if they had not furniſhed too many fatal evidences of depravity in the paſſions.

In becoming their hiſtorian I have undertaken an irkſome task. We peruſe the annals of the Cæſar's with inſtruction, but alas! our advantages are attended with diſſatisfaction and alloyed by continual diſguſt. We naturally ſhrink from beholding the frailties and vices of men, and pant for an opportunity of contemplating the brighter aſpect of moral nature. Yet it is neceſſary that truth ſhould extend her mirror and expoſe the deformities of individuals who have ventured to ſacrifice the rights and liberties of their country.

The preſent and ſucceeding number ſhall be dedicated to a detail of the ſcrutiny. Pains have been taken to collect every material circumſtance. A tranſaction ſo important to the intereſts of the public ſhould be univerſally and correctly underſtood. Confining myſelf in this number to the proceedings with reſpect to the fifth ward, it ſhall be rendered as conciſe as may be warranted by perſpicuity.

About a month before the election, and ſufficient to embrace the period required by law, Joſhua Barker, eſq. and thirty eight other citizens purchaſed of Mr. Abraham Bloodgood, a lot of ground and tenement in Frankfort-ſtreet, for the price of two thouſand dollars: the purchaſe was fair and abſolute and the conſideration money was actually paid. There was not the ſhadow of an agreement, either expreſſed or implied, to re-convey the property. On the contrary, it became to every intent the eſtate of the purchaſers. Taking the price which was actually paid as the baſis of valuation; every proprietor was rendered a freeholder to the amount of fifty one dollars and upwards.

James Rooſevelt and John P. Ritter, eſqrs. were the candidates on the federal (or, as I ſhall hereafter denominate it, the tory) ſide. Philip I. Arcularius and James Drake were ſupported by the republicans—at the cloſe of the Poll, it appeared that Mr. Arcularius had a majority of 6 as Alderman and Mr. Drake, a majority of 8 as aſſiſtant for the fifth ward. A return to this effect was accordingly made by the Inſpector.

On the 18th of November, (the day ſucceeding the election) letters demanding a ſcrutiny were received from Meſſrs. J. Rooſevelt and Ritter. This demand was readily complied with by the Common Council, and Thurſday,

the 26th of November, appointed as the period for commencing the extraordinary drama.

The period between that day and the 4th of December was principally occupied in the examination of the electors whoſe ſuffrages were challenged, and of witneſſes with reſpect to their qualifications.

In ſtating the material caſes which became preſented for deciſion, I ſhall commence with the votes in favour of Mr. Arcularius, which were challenged by Mr. J. Roofevelt; and afterwards ſtate the ſituation of the voters in favour of the latter, who were objected to on the part of the former.

The proceedings were commenced by a general challenge againſt the votes of the proprietors of the lot and tenement in Frankfort-ſtreet.

In ſupport of ſuch general challenge, five diſtinct grounds of exception appeared to be taken.

1ſt. That the title deed was not executed on the day it purported to bear date.

2d. That the conſideration money had not actually been paid.

3d. That the conveyance was not abſolute and bona fide, but that ſome ſecret truſt exiſted to reconvey to the grantor.

4th. That the property was not worth two thouſand dollars (the conſideration money paid), and was, therefore, inſufficient to entitle the ſeveral grantees to a vote.

And, laſtly, That the ſame being a purchaſe made for the purpoſe of voting at an election, was contrary to law.

With reſpect to the firſt, ſecond, and third exceptions, there could not remain the veſtige of a doubt. Evidence was produced to demonſtrate the reality of the purchaſe, and the *bona fide* payment of the conſideration.

It was frankly admitted, that the purchaſe was made to entitle the proprietors to the elective franchiſe. It was contended, that ſuch purchaſe was in purſuit of a legal and laudable purpoſe; that no ſtatute had been paſſed to prohibit it; and that it inveſted the proprietors with rights of which no power inferior to that of the legiſlature could deprive them.

It only remained to eſtabliſh the value of the property.

On the one hand, Mr. Daniel Hitchcock depoſed, that he was acquainted with the property. That he was, or had been, an aſſeſſor under the government of the United States. That, in his aſſeſſment book, it ſtands rated at a thouſand dollars. That he thought he might be a tolerable judge of its value. That, at the extent, he believed it not worth more than ſix hundred pounds.

Upon his croſs-examination, he admitted, that he had not made any accurate view ſince the election. That he had never been in the upper part, or ſtories, of the building. And, that it is cuſtomary in aſſeſſments to undervalue property.

Mr. Shimeal teſtified, that he knew the lot and tenement. That he was not acquainted with its value. That lots will ſell higher at one time than another. That he would accept of 2200 dollars for a full lot. That one lot, in the neighbourhood, lately ſold for 2000 dollars. That it was impoſſible for him to eſtimate the value of any lot. When aſked what price he would give for the lot in

queſtion, he very ſhrewdly replied he could not ſay; but if he wanted it then he could tell what he would give for it*.

On the other hand, Mr. Peter Bonnet, Mr. Forbes, Mr. A. Bloodgood, and Mr. I. Bedient were introduced as witneſſes to eſtabliſh the value of the lot and tenement.

Mr. Bonnet declared that he lived in the neighbourhood —that he is a competent judge of the value of property as far as ſuch value is a ſubject of eſtimation—that he was well acquainted with the property in queſtion, and that were it his, he would not take two thouſand dollars for it.

Mr. Forbes mentioned his having a lot in the neighbourhood, which he eſtimated at 1900 dollars, and that he would not take a leſs ſum for it—that the property of the voters was really worth 2000 dollars.

Mr. Bloodgood teſtified his firm belief that the property was really worth the conſideration paid for it.

Mr. Bedient ſtated his being acquainted with the lot and tenement in queſtion: it faces a ſtreet; that ſome time in March laſt, he talked about purchaſing it. Mr. Bloodgood then aſked between eight hundred and nine hundred pounds for it. He did not think it over rated at that time, and retains the ſame opinion ſtill.

* The testimony of this honest German is a complete burlesque upon the proceedings of the Common Council. Wonderful that they should not know that lots of ground will sell higher at one time than another, until they received the information from the mouth of a witness. This uncultivated man discovered more sagacity than any of them. It was impossible for him to ascertain the value of any lot—he was conscious, how much the ideas of value rest in mere conjecture—he knew how much they depended upon situation and circumstances——that such estimation must greatly be governed by the purposes for which it is wanted, and the uses to which it is to be applied—that property is more valuable, because more serviceable to one man than another—that there is no general standard by which it can be measured with mathematical exactitute—he could not tell what he could give for articles he did not want—a grain of corn is more valuable to a cock, than an ingot of gold—When Mr. Shimeal wanted property, then he could tell what he would give for it—and so could the wiseacres of our Common Council.

Such were the objections, and such the testimony, with respect to the property purchased in the fifth ward. I shall defer my observations upon the subject, until I have stated the particulars of the other cases.

The remaining voters in favor of Mr. Arcularius, with respect to whom particular exceptions were taken, were Edward Sands, James K. Delaplaine, Stephen Latham, Henry B. Earl, Thomas Wilson, Benjamin A. Egbert, and Gurdon S. Mumford.

Edward Sands had agreed to purchase a lot of ground. He produced a written contract, with an unexecuted deed annexed. He had paid no part of the actual consideration, but he had paid upwards of £. 20 as interest upon it. He was in possession of the property when he voted, had made improvements, and stated it to have arisen more than £. 20 in value since the purchase. Under these circumstances he possessed an equitable estate.

Mr. Delaplaine had been possessed of a considerable freehold; but, some time ago, intending to leave the state, he executed a conveyance to Gilbert Everingham, and also suffered a judgment to be entered against him, in favor of Everingham, for three thousand dollars. An affirmation of Mr. Everingham was produced, stating, that the only purpose of such conveyance and judgment was to secure about 500 dollars due to him from Delaplaine. That such was the agreement when the conveyance was executed, and, that, upon the payment of this sum, he is bound to deliver to Mr. Delaplaine all vouchers respecting the property. The judgment was for the same consideration, and the value of the property, beyond the incumbrance, sufficient to entitle the holder to a vote *.

* Upon a division with respect to the vote of Mr. Delaplaine, a majority

Mr. *Latham's* mother poſſeſſes an eſtate for life. He has a veſted remainder in fee.

The mother of Mr. *Earl*, during her coverture, conveyed a freehold to him—the father did not join in the conveyance. It was executed and acknowledged by the mother, but not in the manner preſcribed by law for the conveyances of married women. Morris Earl, the father, ſome time afterwards agreed to the conveyance, and himſelf executed another. Thoſe conveyances were made ſix or ſeven years ſince. Mr. Earl, the voter, has had the poſſeſſion under them—has made leaſes of the property, and is in the pernancy of the profits. Morris Earl has been dead two or three years, and his widow has never interfered with the poſſeſſion of her ſon. *

were againſt it, as follows:—In favour of the vote, the Recorder, Aldermen Barker, Minthorne, Post, Messrs. Gilbert and Verveelen:—Againſt it, Aldermen Strong, Coles, Lenox, Bogert, Messieurs Brasher, Ten Eyck, Nitchie and Carmer.

* I ſhall forbear advancing a legal opinion upon the vote of Mr. Earl, nor do I heſitate to admit the principle that the conveyances of feme coverts, unleſs executed in the manner preſcribed by law, are void. Yet there may be circumſtances after coverture which amount to a re-delivery of the deed and thereby confirm and eſtabliſh it.

Mr. Earl's remaining in poſſeſſion and receiving the rents, coupled with his mother's acquieſcence upwards of two years after the death of her huſband, are features in his caſe which render it peculiarly ſtrong.

Although I am not prepared to advance the poſition that thoſe circumſtances would amount in law to a conſtructive re-delivery of the deed; ſtill I think that it preſents an important queſtion which ought not to have been haſtily decided at the ſpur of the moment, without conſideration: particularly when the law characters of the board requeſted an opportunity to conſult authorities upon the ſubject.

The caſe of *Goodright ex. dem. Carter*, vs. *Strafhan and others*, in *Cowper*, 201. preſents a leading deciſion upon this point.

Mr. and Mrs. Carter during their cohabitation mortgaged certain property to which the latter became entitled. The inſtrument was not executed according to the formalities preſcribed by law to be obſerved in the conveyances of feme coverts. But Mrs. Carter after the death of her huſband ſubſcribed two papers, one ſurrendering the poſſeſſion of the houſe to the executors of the mortgagee, and the other directing the tenant to attorn to thoſe executors.

It is plain, that neither of thoſe ſubſequent acts could amount to a conveyance; unleſs predicated upon the original, though, informal grant.

Lord Mansfield, in delivering the opinion of the court eſtabliſhed two

Thomas Wilſon being poſſeſſed of real property, by a conveyance made in 1795, granted the ſame to Lincoln and Biſhop, their heirs and aſſigns---to the uſe of his wife during her life, and of his children afterwards. So that neither the voter or any future huſband ſhould intermeddle with the property, or controul the wife's eſtate. The deciſion againſt the vote of Mr. Wilſon, was unanimous.

Mr. Egbert's partner (Mr. Ward) obtained a lot of ground, and contracted to ſell a moiety to him. Mr. Egbert paid 500 dollars towards improving the lot, but no part of the actual conſideration. Mr. Ward conſiders him as the owner of a moiety, and that he has a right to retain the price of it upon the ſettlement of their partnerſhip accounts. Mr. Egbert's was therefore a *truſt eſtate*, the deciſion againſt his vote was alſo unanimous.

Mr. Mumford was one of the grantees of the property in Frankfort-ſtreet, independent of the general objections with regard to that tranſaction. It was alſo objected againſt his vote, that a judgment of non proſs upon a writ of error, for 230 dollars and 99 cents, in favor of Hallett and Bowne, ſtands entered againſt him and David Mumford jointly, of the term of July, 1800.

To combat this objection an affidavit of Mr. Mumford, was produced ſtating:

1ſt. That the above freehold is of the value of 50 dollars and upwards.

2. That he is ſeized of other freehold eſtate in the city, (but not in the ward) to the amount of 2000 dollars and

principles.—1st. That such conveyance might be rendered valid by a redelivery; and, 2d. That circumstances may amount to a redelivery in law. The circumstances in that case were decided to be sufficient for the purpose, and judgment was accordingly given for the representatives of the mortgagee. LYSANDER.

upwards, free of incumbrances, unleſs the above judgment is to be conſidered as ſuch.

3. That Hallett and Bowne obtained a judgment againſt him and David Mumford, for 168 dollars and 83 cents, on the 12th of April, 1798; and that a writ of error was brought thereon.

4. That on the 17th of May 1798, after the entry of the judgment and the commencement of the writ of error, D. M. and himſelf obtained a regular diſcharge under the act for giving relief in caſes of inſolvency, and that the amount of the judgment was included in the inventory of debts exhibited by them.

Laſtly, that ſuch judgment was rendered againſt them after their diſcharge, for a pre-exiſting demand, from which they were legally exonerated. Mr. Mumford's vote was alſo upon this ground rejected *.

We now proceed to the votes in favor of Mr. J. Rooſevelt, which were objected to on the part of Mr. Arcularius. Theſe were the caſes of George Furman, Jonas Minturn, Ebenezer Leggett, Joſeph Leggett, John, George, and Leonard Minuſe, Robert M'Dermot, T. S. Arden, C. Walton, E. Lyde, jun. and Uzal Tuttle. The four firſt were caſes of truſt; the others, except Tuttle's caſe, were upon eſtates of remainder.

The property upon which Mr. Furman voted, was conveyed to his mother, to hold the ſame to her uſe in truſt, &c. for him. Mr. Furman's vote was admitted.

By the conveyance under which Mr. Minturn voted, he was alſo a *ceſtuy que truſt*. His vote was admitted. †

* The diviſion was as follows:—In favour of the vote, the Recorder, Aldermen Barker and Minthorne, Mr. Gilbert, and Mr. Verveelen:—Againſt it, Aldermen Strong, Coles, Lenox, and Poſt, Meſſrs. Braſher, Nitchie, and Ten Eyck.

† Diviſion upon the votes of Mr. Furman and Mr. Minturn:—In their

Ebenezer Leggett had purchaſed property of the executors of Hildreth, for 1100 pounds. He had paid 500 dollars in part of the conſideration to Mr. Walton, one of the executors. He ſaw a deed, but did not know whether it had been executed or not, it was to be executed by the other executor. No poſitive agreement was made with reſpect to the terms of payment, and nothing had been ſaid about a mortgage. Under theſe circumſtances, Mr. Leggett poſſeſſed an equitable intereſt, but the legal eſtate was not veſted in him; nevertheleſs his vote was admitted.

Joſeph Leggett was in poſſeſſion of a houſe and lot of ground which he has occupied 6 or 7 years, It was purchaſed by Thomas Leggett, with the money of Joſeph, but the title deeds were taken in the name of Thomas Leggett as grantee. Whatever remedy, in a court of chancery, Joſeph might poſſeſs to enforce a conveyance from Thomas to him, the legal eſtate was undeniably in the latter. Yet the vote of Joſeph Leggett was admitted.

It is unneceſſary to ſtate the particulars of the titles of the three Minuſes, Meſſieurs M'Dermot, Arden, Walton and Lyde. It is conceded on all hands that they were ſeverally ſeized of veſted freehold remainders; their caſes were parallel to that of Mr. Latham. Thoſe votes were properly rejected by a conſiderable majority.

Uzal Tuttle was in town, but did not appear to eſtabliſh his vote. Iſaac L. Kip, eſquire, appeared as a witneſs upon the occaſion, and declared that he had been employed by the voter to obtain a partition of his property. Mr.

favor, Aldermen Coles, Lenox, Bogert, and Post, Messrs. Brasher, Carmer, Nitchie, and Ten Eyck:—Against them, the Recorder, Aldermen Barker, Minthorne, and Strong, Messrs. Gilbert, and Verveelen.

* In favour of admitting the votes of the Leggetts, Aldermen Cole, Strong, Lenox, Post, and Bogert, Messrs. Brasher, Ten Eyck, Carmer, and Nitchie:—Against their admission, the Recorder, Aldermen Barker, and Minthorne, Messrs. Gilbert, and Verveelen.

Kip ſaw either an original will or a probate of one in favor of the voter and others; and alſo a deed to the teſtator. He ſtated further, that an order for a partition was obtained in the Mayor's Court. Tuttle's vote was admitted by a majority of two.

Such is a ſuccinct and accurate detail of the caſes of conteſted votes in that ward. Upon cloſing the teſtimony, the arguments of Mr. J. Rooſevelt's counſel, were principally directed to eſtabliſh the admiſſibility of ſuffrages upon the baſis of remainders and truſt eſtates.

As the deciſion with reſpect to eſtates in remainder was correct. Obſervations upon that point, are altogether unneceſſary. It is proper that ſome reflections ſhould be made upon the ſubject of truſts.

An eſtate in truſt is entirely the creature of a court of equity, and diveſted of every property of a legal freehold.* It is a right to receive the profits, and to diſpoſe of the land in equity—properly ſpeaking, it is an equitable title to lands. But the legal eſtate † is veſted in the truſtee, and even if he conveys it to another without notice of the truſt, the ceſtuy que truſt, or party poſſeſſing the equitable intereſt, would be bound by his act. If the truſtee commits felony, the lands are forfeited by the Engliſh law, and the ceſtuy que truſt muſt reſort to his remedy in chancery §. If a truſtee deviſes all his eſtates, ſuch general deviſe paſſes an eſtate, of which he was but truſtee, and the ceſtuy que truſt muſt again apply to equity for redreſs againſt the deviſee ‡. No conveyance by the ceſtuique truſt can work a forfeiture of the legal eſtate of truſtee ‖. The widow of the ceſtuy que truſt is not entitled to dower.** The legal eſtate---every legal right, privilege

*Sanders 177. †Sanders 190. §Idem 192. ‡Ibid. ‖Idem 201. **2 Blk 337

and remedy is in the truſtee, and not in the ceſtuy que truſt. The intereſt of the latter is no where recogniſed or perceived, except within the walls of a court of equity.

But ſo *precipitate* were the *federal* gentlemen, in ruſhing upon an inſtant deciſion, that even if they had the legal ability to inveſtigate the queſtion, they did not allow themſelves an hour for the purpoſe. Incompetent as they undoubtedly were to an accurate examination of the ſubject, had they only read and beſtowed the reflection of a moment upon the act for regulating our charter elections, conviction muſt have flaſhed upon their minds, however uninformed. Without travelling farther, it is apparent from that ſtatute, that the elective franchiſe is repoſed in the truſtee, and not in the ceſtuy que truſt. A clauſe in that very act expreſsly recognizes the right, and limits its operation: For, it is thereby declared, that the truſtee for an infant, or a body corporated, ſhall not be qualified to vote. Moſt evidently intimating, that every other truſtee is intitled to a ſuffrage.

If a truſtee (and it may be neceſſary to inform the majority of our Common Council, that the truſtee is the perſon poſſeſſing the legal eſtate). If the truſtee did not by law poſſeſs the right to vote, do thoſe very learned and ſagacious gentlemen believe that the legiſlature of this ſtate would have been ſo abſurdly ignorant as to paſs a ſolemn and deliberate ſtatute for reſtricting the exerciſe of a right which does not exiſt at all? As the caſe now ſtands, the queſtion lies between the Corporation and the Legiſlature. Certain it is, that they are at variance upon the ſubject. One or other of theſe bodies has rendered itſelf ridiculous.

In the confuſion of the ſubject, the Common Council is alſo moſt directly in a ſtate of war with itſelf. Whether

it proceeded from accident or design, from the wanderings of honest ignorance, or the back-sliding of sinister intention, it is apparent that they made inconsistent decisions upon the same subject. The cases of Sands and Egbert, and perhaps of Delaplaine, preferred trusts as marked and distinguishable as those of Furman, Minturn and the Leggetts. It is true that the latter had paid either the whole or a part of the consideration money. Sands had paid his money in the form of interest, and Egbert had advanced his in the shape of improvements upon the property. In either case, the contract had been partly executed, and a court of equity would equally compel a specific performance. The true questions were, whether the parties possessed an equitable interest, and whether an equitable interest entitled its proprietor to a suffrage. Sands and Egbert were in possession as well as the others. If chancery would decree a specific execution of the contract in their favor, their trust estates were equal in degree to those of Furman, Minturn, and the Leggetts. Most wonderful, that gentlemen so extremely blind to principle, by an instant miracle of intelligence, should suddenly acquire the astonishing acuteness to fasten upon a distinction without a difference.

An involuntary smile may be excited by the weakness, or the follies of individuals. We cannot suppress our indignation upon beholding manifest depravity and injustice. On the 4th of December, at an advanced period of the evening, the Common Council, from the open court room, in the City-Hall, retired from the observation of spectators to the private recesses of their chamber. No sooner had they arrived within those walls, than a motion was made for an instant decision. In vain was it urged by the mayor, that the questions were difficult, professional, and entitled to deliberation. Authorities had been produced by counsel,

which he had not an opportunity to examine. He requeſted time to inſpect thoſe authorities, and offered to meet the board at as early a period as they ſhould appoint. His efforts to produce a ſtate of diſpaſſionate deliberation, were entirely fruitleſs. Warmed with the object in view, and eager to execute their predetermined purpoſe, the federal members were obſtinate and inexorable. Admitting their want of information upon the queſtions they were about to decide—conſtrained to acknowledge their incompetency. On that very evening, within an hour after the arguments of counſel, without debate, without conſideration, ſuppreſſing diſcuſſion and ſilencing the voice of reaſon, did they with all the indecency of precipitation, deprive near forty freeholders of their legal rights of ſuffrage, and baniſh from their ſeats, an alderman and aſſiſtant, who were returned as elected with all the ſolemnities and requiſites preſcribed by law ! ! !

Upon the memorable queſtion with reſpect to the legality of the votes upon the property purchaſed of Mr. Bloodgood, the following was the diviſion:—In favour of their admiſſion, the Recorder, Aldermen Barker, and Minthorne, and Meſſrs. Gilbert and Verveelen: Againſt them, Aldermen Coles, Strong, Lenox and Poſt, and Meſſrs. Braſher, Ten Eyck and Nitchie.

To cloſe the honorable ſcene with proper dignity and grace, Mr. Braſher now produced his celebrated revoluſion—a meaſure calculated to enrol him among the moſt conſpicuous ſons of fame. Let me give a *fac ſimile* of the extraordinary inſtrument—

"Whereas ſundry perſons, thirty-nine in number, thirty-ſix of *whome* voted at the late election of Charter Officers in the fifth ward, to wit, *Josuah Barker*,

(* * *Cætera deſunt.* * *)

by combination among themſelves, for the avowed purpoſe of obtaining votes at the ſaid election, on the 16th day of November laſt, purchaſed a lot of ground, and the buildings thereon, ſituate in the ſaid ward, from one Abraham Bloodgood, at the price of 2000 dollars, and took his conveyance for the ſame to themſelves, their heirs, & aſſigns, as tenants in common. And whereas it has been queſtioned whether the ſaid tenements were in truth of ſufficient value to entitle the ſaid ſeveral perſons to vote at the ſaid election: And alſo, whether a freehold purchaſed as aforeſaid by ſuch combination, for the ſole and avowed purpoſe of voting at the then election of charter officers, could afford a qualification to the purchaſers for voting as aforeſaid. And whereas the evidence produced by the parties, and the arguments of their council, have been heard *and duly attended to*—

" Therefore, Reſolved, as the *ſenſe* of this board,

" 1ſt. That the ſaid combination is contrary to the true intent and ſpirit of the charter of this city and of the act of the legiſlature regulating the election of charter officers, and is to be conſidered as a fraud * upon the election of evil and dangerous example—calculated to defeat the regular and deliberate exerciſe of the important *privilage* of voting for charter officers by covert and ſiniſter artifices and contrivances of a ſmall number of individuals.

* I would ask those conscientious gentlemen, who are so extremely *liberal* in their charges of *Fraud*, whether the total annihilation of the whole body of freemen is not a greater fraud than the purchase of a freehold to become entitled to a vote? Is not the denial of the privilege of voting, to the great majority of citizens, a public offence of much more evil and dangerous example? Is it not infinitely more calculated to defeat the freedom of charter elections? It is a direct and wanton outrage upon the feelings and rights of the people.

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" 2dly. That the ſaid lot of ground and the building thereon are not, in the judgment of this board, of ſufficient value to entitle thirty-nine perſons each to a vote in the election of charter officers, and,

" 3dly, for the reaſons aforeſaid, this board doth reject and diſallow the votes of the ſaid thirty-ſix perſons ſo given as aforeſaid."

This precious morſel of logical ſagacity was carried by the accuſtomed majority.

It was thereupon reſolved, that James Rooſevelt, eſquire, by a majority of legal votes, was elected alderman, and John P. Ritter, eſquire, aſſiſtant of the fifth ward. That the clerk of the city, ſhould be directed without delay, to inform them of the deciſion of the Common Council in their favor, and give them notice to attend the board, to take the oaths of office, preſcribed by law.

Thus ended the ſolemn mockery of this unexampled ſcrutiny. An event which muſt produce impreſſions upon the mind, never to be effaced. An exerciſe of power ſo arbitrary and unparalleled, as the entire deſtruction of a popular election, muſt in future place the liberties of the people within the complete controul of the members of the Common Council, unleſs meaſures are adopted to prevent the repetition of ſuch an outrage. It remains to be aſcertained, whether the inhabitants of this city will purſue the legal means of eſtabliſhing their rights upon a firm, ſalutary and conſtitutional foundation, or ſink ſupinely into the lethargic ſlumbers of deſpotiſm.

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No. V.

HISTORY OF THE SCRUTINY IN THE FOURTH WARD.—PROCEEDINGS OF THE COMMON COUNCIL.—QUALIFICATION OF THE RETURNED MEMBERS.

" Party raged;
" And partial power, and licence unrestrain'd."

THOMSON.

" To what an height will human madness rise !
" Where will its impious daring fix its bounds ?
" If each succeeding age gains strength, and swells
" With ranker villainy."

POTTER'S EURIPIDES.

AFTER adopting the principles in Mr. Brasher's resolution, it was evident that the appearance of an investigation into the election of the Fourth Ward was idle and insulting. It was clear, that every material question had already been decided—and it seemed manifest, that the majority of the board were prepared to venture upon every extremity for the accomplishment of their purpose.

Previous to their recent decision, some flattering hopes of justice had been entertained. The majority had carefully abstained from committing themselves with regard to the votes upon the property which had been purchased from Mr. Bloodgood. So long as it was possible, they anxiously evaded the subject, and expressed their wishes, if

not their expectations, that a determination ſhould be made without involving that point. In the view of thoſe gentlemen, it was a matter of extreme delicacy. It was a painful and embarraſſing ſubject! Could they have ſucceeded in eſtabliſhing more challenges, we ſhould never have heard of their preſent deciſion.

The ſeventh of December was the day appointed by law for adminiſtering the official oaths to the different charter officers. Three o'clock in the afternoon was the hour appointed for that purpoſe. A meeting of the Common Council was directed in the morning, with a view of determining the ſcrutiny before the period aſſigned for the reception of the new members.

Cornelius C. Rooſevelt, and P. H. Wendover, eſquires, were the republican candidates. J. Bogert and Nicholas Carmer, were their competitors. The former were returned to be duly elected by a majority of 33 votes.

The oppoſite candidates appeared in the morning, and produced their reſpective liſts of challenges. Thoſe liſts having juſt been interchanged, it was not to be expected that Mr. Rooſevelt ſhould have been ready to proceed until he was furniſhed with the exceptions of his antagoniſt. He requeſted an indulgence of only two hours for the neceſſary preparation, and expreſſed his willingneſs to commence the proceedings at the expiration of that time.

In this ſtage of the buſineſs, Alderman Coles, after expending the time which was neceſſary in the compoſition and correction of it, introduced the following remarkable reſolution:

"Whereas, at the election for charter officers in the Fourth Ward, held on the third Tueſday of November

laſt, it appears by a return made by the Inſpector of ſaid election, that Cornelius C. Rooſevelt had a majority of votes for alderman, and P. H. Wendover had a majority of votes for aſſiſtant alderman.

And whereas, ſince the ſaid election, to wit, on Monday laſt the 30th ultimo, John Bogert, a candidate for the office of alderman, and Nicholas Carmer, a candidate for the office of aſſiſtant, at ſaid election, did preſent to this board their memorials, *ſtting* forth that the ſaid Cornelius C. Rooſevelt and P. H. Wendover were not duly and legally elected, and demand a ſcrutiny for the purpoſe of determining who of the ſaid candidates were legally elected, and which memorial they did ſubſtantiate by their oaths, as thereunto required.

" And whereas, this board did, as will appear by their minutes, determine to grant the prayer of ſuch memorial, and the reſpective candidates have been furniſhed with information of ſuch determination of this board, and this day at ten o'clock was aſſigned for the ſaid Cornelius C. Rooſevelt and Peter H. Wendover to appear and ſubſtantiate the votes objected to by the ſaid John Bogert and Nicholas Carmer.

" And whereas, the ſaid Cornelius C. Rooſevelt and P. H. Wendover did appear this morning, and ſtate to this board, that they were not then ready to ſubſtantiate the ſaid votes objected to.

" Therefore, Reſolved, that the ſaid Cornelius C. Rooſevelt and Peter H. Wendover *are not yet duly and legally* elected alderman and aſſiſtant, nor can they be permitted to take the neceſſary oaths as ſuch, or take their ſeats at this board, until the ſaid ſcrutiny ſhall be fully examined and determined upon."

A reſolution that members regularly returned elected by a large majority, are not yet duly elected, to ſay the leaſt, was an act of aſtoniſhing boldneſs. It was exerciſing a power parallel to that which is ſometimes exerciſed by the Engliſh ſovereign, that of diſpenſing with the laws by a *non obſtante* edict. It was uſurping an arbitrary controul over the elections of the people. A propoſition ſo monſtrous was an overmatch for the genius of federaliſm itſelf. Upon a diviſion, ſix members roſe in its favour, and ſix againſt it. It was accordingly loſt by the caſting vote of the recorder*.

Meſſrs. Rooſevelt and Wendover having withdrawn from the council-chamber under the impreſſion that the ſcrutiny was not to proceed until the next day, a motion was made, that they ſhould be notified to proceed immediately. Upon a diviſion, the votes upon each ſide were equal, and the motion was negatived by the recorder.

The buſineſs of the morning cloſed with a reſolution introduced by Alderman Lenox, in the following words:

"Whereas a *ſcruitany* has been demanded, & granted for the fourth ward of this city, & the ſame being proceeded on, and *their* not being ſufficient time to finiſh the ſaid *ſcruitany* before the time by law for *qualifieng* the members duly elected on the 17th day of November laſt.

Therefore reſolved as the ſenſe of this board, that the alderman & *aſſiſant*, returned as elected at the ſaid election, ought not to be qualified into office until ſuch *ſcruitany* be determined."

This reſolution was accordingly paſſed. Aldermen Lenox, Coles and Poſt, and Meſſrs. Ritter, Braſher, Ten

*Aldermen Lenox, Coles, and Post, and Messrs. Brasher, Ten Eyck, and Nitchie were in favour of the resolution.

Aldermen Barker, Misthorne and Strong, and Messrs. Ritter, Verveelen and Gilbert voted against it.

Eyck and Nitchie voting in its favour, and Aldermen Barker, Minthorne, Strong, Meſſieurs Gilbert, and Verveelen in the negative.

After reſolving to recommence the ſcrutiny the next day at 5 o'clock, the Common Council adjourned to meet in the afternoon, for the purpoſe of being qualified for the enſuing year.

Retaining the ſame integrity and firmneſs, which ſo eminently diſtinguiſhed him, while a repreſentative in Congreſs; in the meeting of the afternoon the mayor adminiſtered the oaths of office to Aldermen C. Rooſevelt and Mr. Wendover, as well as to the other charter officers elect. The poll liſt was preſented to him. It was a record which he was bound to obey. It was an important criſis. He purſued his own impreſſions of law and rectitude. He regarded only the conſcientious dictates of duty.

On the 8th of December, the Common Council met in purſuance of their adjournment, to reſume the conſideration of the ſcrutiny. Mr. Riker, of counſel for Alderman C. Rooſevelt and Mr. Wendover, ſubmitted the queſtion, whether, as they had been already ſworn as members, and thereby taken the legal poſſeſſion of their ſeats, the Common Council were legally entitled to proceed. The mayor mentioned the reſolution of the board, and the ſcrutiny proceeded.

The firſt caſe preſented, was that of Smith Valentine. A deed was produced to him, and 73 other perſons for a houſe and lot of ground in Dey-ſtreet.

Daniel D. Wickham and Return Strong the ſubſcribing witneſſes to that deed, were introduced; both of them ſwore to the execution of it. The latter teſtified its deliv-

ery to W. Boyd, eſquire, as the general agent of the grantees.

The board then proceeded to examine witneſſes with reſpect to the value of the property.

Mr. George Stanton ſwore that the day before, he was requeſted to examine it. That he accordingly went and examined it throughout. It is the houſe and lot No 50, Dey-ſtreet—is conſiderably out of repair, and in his opinion worth about £1500.

Dr. Gardner Jones teſtified, that he owns a houſe and lot in Dey-ſtreet, which he valued at £. 2500; that he knew the houſe and lot No. 50; that about 6 or 7 years ago he offered £.2200 for the houſe of Mrs. Crookes, next door to it; Mrs. C. then aſked £.2500 for her houſe and lot; ſhe continues to aſk the ſame price, but has lately ſaid ſhe would take £.2400 in actual money. He has ſeen the houſe No. 50, and been in the front room; it looks rather better than the houſe of Mrs. Crookes, and, as far as his knowledge extends, "is as eligible as that." Dr. Jones gave £.1900 for his houſe about 6 years ago; it was then in a very unfiniſhed ſtate.

Thomas Miller lately bought the houſe No. 52 in the ſame ſtreet; No. 50 is of the ſame ſize, and improvements pretty much the ſame. In May laſt, he gave 5300 dols. for his houſe; he believes No. 50 is not as good; ſuppoſes about 1000 dollars difference; believes that No. 50 may be worth about 4000 dollars, perhaps a little more; he was never inſide of it; the building is of the ſame ſize with his own; he thinks it appears ſomewhat older; his houſe was inſured at 2000 dollars; it would rent for £200; he ſuppoſes No. 50 would rent for £150, if in good order; he valued vacant lots at £.1000.

Mr. Striker owns the houſe and lot No. 55 Dey-ſtreet; knows the houſe No. 50, but has never been in it; his is 100 by 25 feet in dimenſion, and has alſo an L to it; he valued his at £.2500; the houſe No. 50 is pretty much like the houſe of Mrs. Crookes.

Mr. Stanton being called again, declared, that Mrs. Crookes' houſe was much better than the houſe No. 50; that it has a back building, and is worth £.400 more; and that he was lately commiſſioned to ſell as good a houſe, as good a lot and as good a ſtand for £.1700.

Mr. John Utt teſtified, that he owns the houſe and lot No. 30 Dey-ſtreet; that his lot is 77 by 25 feet in dimenſion; that within a year paſt, he has been offered, and refuſed, £.2200; that he has been in the lower part of the houſe No. 50, and believes it to be fully worth the money given for it.

John Swartwout, Eſquire, and Meſſrs. Matthew L. Davis and James Warner, ſeverally appeared, and teſtified that they were ſeized of freeholds in the 4th ward to the amount of £.20 in their own rights, over and above all incumbrances; and that they had poſſeſſed the ſame for the ſpace of thirty days and upwards preceding the election. Several queſtions were put to them, which they did not conſider themſelves bound to anſwer. Theſe gentlemen were acquainted with their rights, and poſſeſſed the ſpirit to defend them. Strictly adhering in their oath to the qualifications preſcribed by law, they declined replying to interrogatories not pertinent to the occaſion. In the habit of extorting the moſt ſervile and implicit obedience, the board of Common Council could not brook the appearance of oppoſition to their authority, their proceedings were inſtantly thrown into a ſtate of diſtraction.

Leaving the electors, the witneſſes and ſpectators, they abruptly retired to their private chamber, without affording the parties a notice of their intention, or appointing any period for the continuance of the ſcrutiny.

The electors and witneſſes accordingly departed. No ſooner had the Council arrived within their room, but they felt the awkwardneſs and delicacy of their ſituation. By their own act, they had interrupted the proceedings. It was the wiſh of the majority inſtantly to decide; yet, what apology could they offer to excuſe ſuch precipitation? In the performance of a criminal taſk, the interval between the reſolution and its accompliſhment muſt be dreadful. Eager to terminate the farce, but apprehenſive of the conſequences, in the midſt of their reſolution, they endured the tortures of fear, anxiety and ſuſpenſe.

They had retired with precipitation—the evening had far advanced—by a ſudden guſt of paſſion, they had compelled the parties to withdraw—electors and witneſſes had all diſperſed into the different quarters of the city—each had retired to his reſpective abode, and engaged in different purſuits. To collect them together, that evening, was impracticable; yet, if poſſible to produce the appearance of formality and a ſemblance of juſtice, Mr. Rooſevelt and Wendover, at that late hour of the night, were called upon to furniſh further evidence to ſubſtantiate the votes in their favor; and given to underſtand, if they had ſuch teſtimony to offer, the board were then ready to hear it.

Mr. Riker, of counſel for the returned magiſtrates, who had remained in the city-hall to await the iſſue of this extraordinary ſcene, immediately replied in writing, That he had further evidence to offer as to the other voters whoſe right to vote had not been examined into. That the evidence would be, that the voters, reſpectively, had a free-

hold eſtate of the value of upwards of fifty dollars in the fourth ward of the city of New-York, in their own reſpective rights, free of all incumbrances. That the voters would reſpectively prove they were poſſeſſed of their ſaid freeholds more than thirty days preceding the late election for charter officers. That they had made no promiſe, expreſs or implied, to transfer or re-convey their or either of their reſpective freeholds; and that they had paid the full conſideration of fifty dollars at the leaſt for each of the ſaid freeholds. That the witneſſes to prove the ſame attended in the room in the city-hall which was aſſigned for the purpoſe; but that the honorable board having adjourned without appointing any time or place for further inquiry, and the witneſſes not knowing when or where to attend the board, it was out of the power of the counſel to produce the teſtimony that evening.

Although the Common Council, by their own act, had completely diſperſed the witneſſes, in defiance of all the circumſtances urged by counſel, the uſual majority of the board reſolved upon an immediate deciſion. A queſtion was accordingly taken upon the vote of S. Valentine, which was negatived as follows: For admitting his vote, the Recorder, Aldermen Barker and Minthorne, Meſſrs. Gilbert and Verveelen.—Againſt it, Aldermen Coles, Lenox, Strong and J. Rooſevelt, and Meſſrs. Braſher, Ten Eyck, Nitchie and Ritter.

The recorder then introduced a reſolution in the following words:

"Whereas at the ſcrutiny which has taken place this evening, witneſſes were examined as to the qualification of Smith Valentine, John Swartwout, Mathew L. Davis, and James Warner, as electors at the laſt election for charter

officers in this city, and whereas the board have decided the qualification of Smith Valentine, as insufficient to vote at such election. And whereas it is proposed to take a question on the qualification of N. Roome, of whose right to vote, further testimony is offered to be produced by the returned members, at the next meeting of this board—therefore, resolved that this board ought not to proceed to the decision of the qualification of any other voter at such election, with respect to which the testimony offered has not been produced, on account of the adjournment of this board to the council room."

Even this resolution, the most just and reasonable, which can possibly be conceived, was negatived. The recorder, Aldermen Barker and Minthorne, Messrs. Gilbert and Verveelen only, voted in its favor; and Ald. Coles, Lenox, Strong, J. Roosevelt, Messrs. Brasher, Nitchie, Ten Eyck, and Ritter, for its rejection.

The next question was upon the right of Nicholas Roome, Mr. Gilbert, Aldermen Barker, Minthorne, and Mr. Verveelen, perceiving the determined spirit of the majority, declined voting, and intimated their intention to prepare a protest against such unjustifiable proceedure. Mr. Roome's vote was rejected, the recorder only rising in its favor.

Aldermen Lenox then presented the subsequent resolution:

"Whereas the witnesses produced on the part of Cornelius C. Roosevelt, esq. and Mr. P. H. Wendover to substantiate the votes objected to by John Bogart, esq. and Mr. N. Carmer, have refused to answer the questions put to them, touching the purposes for which the freehold on which they respectively voted, was purchased;

"And whereas no evidence has been produced to this board, to ſhew that a certain William Jenning, who conveyed to the perſons whoſe votes are objected to, and upon which conveyance the ſaid votes were given, had a legal title to the eſtate ſaid to be conveyed to the ſaid voters;

"And whereas the grantees of the ſaid property were not produced in order that the board could have fully aſcertained all the circumſtances relative to the ſame; And the board being fully convinced * that the ſaid property was purchaſed ſecretly, with the ſole view of creating votes unduly to influence the election of alderman and aſſiſtant, at the late election in the fourth ward;

"Therefore reſolved that the votes ſo objected to by John Bogert and N. Carmer, and contained in the deed referred to, are unlawful, in as much as the property was not of the value required by law—free of incumbrances, and the ſame is contrary to the ſpirit of the charter of this city, and the laws of this ſtate, relating thereto."

Mr. Lenox's reſolution was carried by a majority of three; himſelf, Aldermen Coles, Strong, and J. Rooſevelt, Meſſrs. Braſher, Ten Eyck, Nitchie, and Ritter, voted for it; and the Recorder, Aldermen Barker, Minthorne, Meſſrs. Gilbert and Verveelen againſt it.

A reſolution was then unanimouſly paſſed, "that the mayor be requeſted to take the opinion of General Hamilton in writing on the following queſtion, to wit, whether under the charter of this city the board have any authority to queſtion the right of a freeholder, or freeman to his ſeat when returned duly elected by the returning officer, as a member?"†

* Without evidence!

† General Hamilton has ſince declined giving his opinion upon the ſubject.

The buſineſs of the evening cloſed with a reſolution "that upon a ſcrutiny, had relative to the election of an alderman and aſſiſtant for the fourth ward, it appeared that John Bogert had a majority of votes for alderman, and Nicholas Carmer for aſſiſtant." That the ſaid John Bogert was therefore duly elected alderman, and the ſaid Nicholas Carmer aſſiſtant of the fourth ward, and that they take their ſeats accordingly.

Such was the termination of this extraordinary proceedure. A tranſaction ſo flagrant, and unprincipled, ſcarcely requires any comment. An attempt to deſtroy the rights of magiſtrates returned to be duly elected, a deciſion precipitated without affording an opportunity for the examination of witneſſes. The exerciſe of a juriſdiction without any inveſtigation of its legality, and the requeſt of a profeſſional opinion, after a deciſion already irrevocably made, are circumſtances, which thoſe gentlemen will ſhortly be called upon to juſtify to the feelings of an inſulted community.

LYSANDER.

No. VI.

PROCEEDINGS OF THE COMMON COUNCIL SUBSEQUENT TO THE SCRUTINY—PROTEST OF THE MINORITY—APPLICATION AND REFUSAL OF MR. BOGERT—SECESSION OF THE FEDERAL MEMBERS—PRESENT STATE OF THE CITY.

"See! self-abandon'd, how they roam adrift,
Dash'd o'er the town, a miserable wreck!"

THOMSON.

AFFAIRS were now approaching to a criſis which required an union of temperate deliberation, with inflexible perſeverance. The deſigns of the federal majority had become completely unveiled. It was a conteſt between uſurpation and juſtice. The arbitrary claims of the corporation were oppoſed to the rights of the people. The balance was ſuſpended between liberty and ſlavery. A ſtate of ſuch diſorder demands the interpoſition of the ſovereign authority. Submiſſion at this period would have amounted to a dereliction of every principle of honor. It would have been a total abandonment of the cauſe of the city.

The mayor and the recorder are the perſons appointed by law to adminiſter the oaths of office to the charter officers elect. It has been uſual in practice, to adminiſter ſuch oaths in the preſence of the Common Council, but that ſolemnity is not in ſtrictneſs required by the charter. In the performance of this duty, the mayor, or the recorder,

muſt be governed by a ſound diſcretion. They themſelves muſt perform the act, and they muſt judge of its propriety. Alderman Rooſevelt of the fourth ward, and Mr. Wendover, had already been qualified—they had taken their ſeats at the board, and were placed in the legal poſſeſſion of their offices. Their election was apparent from the face of the record returned. The right of ſcrutiny was conteſted, and the preponderance of argument was evidently againſt the propriety of its exerciſe. The Mayor and the Recorder had been preſent during the whole of the proceedings. They were ſpectators of their injuſtice. They had witneſſed their illegality. Under theſe circumſtances Mr. Bogert applied to take the oath of office. Upon what principle of juſtice could it have been adminiſtered? The right of Alderman Rooſevelt was evident. Could the pretenſions of two claimants have been admitted at the ſame moment? Could he have been deprived of his office previous to the deciſion of a tribunal acknowledged to be competent?

To the application of Mr. Bogert, the Mayor replied with calmneſs, that he had foreſeen the queſtion, and had examined it with impartiality. That, in his official conduct, he ſhould ſteadily endeavour to adhere to the path of duty —regretting the neceſſity which compelled him to differ from the majority of the Common Council, he could not avoid purſuing the dictates of his own opinion. He, therefore, declined adminiſtering the oath to Mr. Bogert. The Recorder, upon being appealed to, coincided in ſentiment with the Mayor.

I ſhall not detail the warmth of expreſſion which enſued. It would be more honorable to deliberative aſſemblies if differences in opinion did not too often lead them to acts

of the greateſt indecorum. It was obſerved by Alderman Coles, that no difficulty could enſue, for that Mr. Bogert was entitled to his ſeat as a magiſtrate of the preceding year. To this it was replied, that ſuch could not be the caſe, becauſe his ſucceſſor had already been ſworn.

Only one ſtep remained to be taken, and that was, by an act of violence, to deprive Alderman C. Rooſevelt and Mr. Wendover of their ſeats. It was accordingly moved, that the clerk ſhould be directed to eraſe their names from the minutes of the board. Succeſsfully oppoſed by the republicans, and driven to deſperation, they were prepared to purſue the utmoſt extremes of raſhneſs and indelicacy. To pronounce a juſt deciſion was not their object. Their only wiſh was to retain their wonted aſcendancy. Defeat, in this conteſt, they viewed as a prelude to the reſtoration of the public rights, and the powers of the Common Council as a bulwark for the ſupport of ariſtocracy. In vain had the law officers of the corporation expreſſed their ſentiments upon a ſubject with which they were moſt converſant. Fruitleſs were the attempts to introduce deliberation and diſcuſſion. The end was too important to be ſacrificed to the inferior conſiderations of probity and juſtice. Accordingly, the motion of Mr. Coles muſt be viewed as the remaining act of deſperation, and as an evidence of ſettled intention to effect the purpoſes of the majority, without a nice diſcrimination of the means to be employed.

Upon the diviſion being called, Aldermen Coles, Strong, Lenox, J. Rooſevelt, Meſſrs. Nitchie, Ten Eyck, Braſher and Ritter appeared in its favour. The Recorder, Aldermen Barker, Minthorne, C. Rooſevelt, Meſſrs. Gilbert, Verveelen, and Wendover voted againſt it. The Mayor

interposed his voice; the number of votes was equal on each side; the motion was accordingly lost.

The interference of Messrs. C. Roosevelt and Wendover may, perhaps, by some, be considered as indelicate; such opinion, however, would not be founded in justice. If their own rights alone had been involved, it would have been entitled to weight; but the present was a public question, in which the liberties of their constituents were at stake. On the present occasion they pursued the impulse of duty; they could not abandon the interests, nor disappoint the expectations, of the ward they represented.

Equally justifiable was the conduct of Mayor. In a crisis which demanded the exercise of duty, the rights of his fellow-citizens could not be sacrificed to false delicacy. If he had a voice to give, could he justify withholding it? At a moment when his country required his exertions, inactivity would, with justice, have been considered criminal. As a constituent member of that body he is entitled to a vote. Upon a pressing emergency, when it can be effectual, he is bound to exercise it.

I am aware it has been believed that the Mayor has only a casting vote in cases of equal division. This opinion, however current, has been received without investigation; like many other received errors, it must be destroyed whenever it becomes the subject of argument. If he is a member of the board, he must be entitled to the privileges resulting from that station. If we are governed by precedent, or analogy, we need not travel far. Neither the vice-president of the United States nor the lieutenant-governor of this state, except upon an equal division, have a right to vote in the respective bodies over which they preside; the reason is obvious, because they are not members. The governor is

only entitled to a caſting vote in the council of appointment, although he is a conſtituent member of it. The reaſon is equally obvious, becauſe he is expreſsly reſtricted by the conſtitution. That prohibition would have been entirely idle if the right of voting was not otherwiſe conſidered as appurtenant to memberſhip. In the houſe of repreſentatives of the union, and in the aſſembly of this ſtate, the reſpective ſpeakers have undoubtedly a vote in their capacity of members; and repeated inſtances can be adduced of the exerciſe of that right.

Language cannot deſcribe the mortification and diſappointment diſplayed upon this queſtion. Conſternation and confuſion inſtantly prevailed. In a moment, the federaliſts perceived the darling object of their illegal conduct completely defeated. To their unſpeakable aſtoniſhment and diſmay, they diſcovered they were no longer a majority in that board over which they had hitherto reigned with arbitrary ſway. Unable to conceal their emotions, they called for an inſtant adjournment, and left the board, as it appears, with the intention to meet no more.

During theſe tranſactions, the minority of the board preſented their promiſed proteſt; from the agitation excited by thoſe proceedings, they were not furniſhed with an opportunity of having it read. It was, therefore, delivered to the clerk, and filed among the records of the Common Council. It is a document too intereſting to be omitted in the annals of their proceedings.

PROTEST OF THE MINORITY.

We the underſigned members of the Common Council of the city of New-York, do ſolemnly diſſent from, and

proteſt againſt the proceedings and deciſions of a majority of that board in relation to the late elections in the fourth and fifth wards, and demand that this our proteſt may be entered of record upon the minutes.

Becauſe, in thoſe proceedings, the majority of this board have aſſumed an authority to which they are not at preſent entitled by the charter of this city or by the laws or conſtitution of their country:

Becauſe, in the exerciſe of that authority they have acted partially, precipitately, in oppoſition to the weight of evidence, and contrary to law:

Becauſe the legiſlature has regulated the election of charter officers by a law of the ſtate and by eſtabliſhing the qualifications of electors of thoſe officers, and providing a method of teſting thoſe qualifications, to wit, by the oath of the elector, to be adminiſtered by the inſpector, have virtually repealed any proviſion for that purpoſe which might otherwiſe have been derived from the charter:

Becauſe, by that act of the legiſlature, made for the ſole and avowed purpoſe of regulating our charter elections, the inſpector is expreſsly made the preſiding as well as returning officer, inaſmuch as he is thereby inveſted with judicial powers, his return, with reſpect to the qualification of electors, is final and concluſive upon this board:

We are ſtrongly impreſſed with this opinion, and believe it to be law, foraſmuch as we are convinced that the authority of the legiſlature is paramount to the charter or bye-laws of any corporation:

Becauſe, in paſſing that act for the expreſs purpoſe of regulating our charter elections, it was the intention of the

legiſlature to place thoſe elections upon a foundation permanent, certain, conſonant to the ſpirit of our laws, conformable to the ſpirit of our conſtitution, and friendly to the rights of the people:

Becauſe, in every other election, the oath of the freeholder, with reſpect to the value and exiſtence of his eſtate, is conſidered to be final:

Becauſe, in the exerciſe of ſuch tranſcendent powers by the Common Council of the corporation, there does not exiſt an adequate reſponſibility:

Becauſe the authority claimed and exerciſed by the majority of this board is unlimited, undefined and undefinable, inveſting them with high and arbitrary powers—powers dangerous to the rights and franchiſes of the inhabitants of this city:

Becauſe the exerciſe of that authority involves the trial of freehold, preſenting queſtions intricate and difficult, to the deciſion of which this board is altogether incompetent:

Becauſe this corporation poſſeſſes not the power of erecting itſelf into a ſelf-created tribunal, to decide upon the value of an elector's eſtate:

Becauſe there is no preciſe and determinate ſtandard by which to eſtimate the value of freeholds. We have ſeen how much that value reſts in mere opinion; we have heard the eſtimation of every witneſs vary with circumſtances and ſituation; we have perceived how widely men of equal judgment and diſcretion will differ from each other: a power ſo looſe, ſo vaſt, affording ſuch unlimited latitude of

diſcretion, would enable a majority of this board to become, with perfect impunity, the arbiters of elections:

Becauſe the authority claimed by a majority of this board might and would, upon every election, involve innumerable trials:

Becauſe this board poſſeſſes not the power of compelling the attendance of witneſſes or electors, nor to enforce their anſwers to interrogatories when they have attended:

Becauſe the man returned elected to an office acquires thereby a *jus legitimum*, or perfect right. Foraſmuch, therefore, as it is an univerſal axiom in law, that every perfect right poſſeſſes its correſpondent remedy, it follows as the direct and inevitable concluſion, that the tribunal which is too imbecile to grant the remedy, poſſeſſes not the juriſdiction:

Becauſe, further, in the exerciſe of this power, every elector will be inevitably driven to the alternative of forfeiting his ſuffrage, or expoſing particularly the nature, extent and evidences of his title, and thereby perhaps deſtroy the ſecurity of property, and occaſion an endleſs ſcene of general litigation.

Becauſe it would enable the majority of this board, by a conſpiracy among themſelves, to be continued, or to introduce their creatures into office, in open contempt and defiance of a majority of electors:

And, finally, becauſe ſuch power is wholly incompatible with the rights, liberty and ſafety of the inhabitants of this city.

In the exerciſe of that authority they have acted partially, becauſe, in the caſes of truſt eſtates, in favor of the

one candidate they have decided for the admiſſion of the votes, while with reſpect to the other, the truſt eſtates were equal in degree, and entitled to the ſame remedy before an equitable forum. They have nevertheleſs totally, and inconſiſtently rejected them.

They have acted precipitately, becauſe with reſpect to one ward, they abruptly retired. And notwithſtanding further teſtimony was offered to ſupport the rights and qualifications of the electors, they decided the fate of the election, without affording an opportunity for the production of that teſtimony.

They have acted in oppoſition to the weight of evidence —inaſmuch as with reſpect to the fifth ward. The payment of the conſideration money for the eſtate, upon which the rejected electors gave their ſuffrages, was clearly proved to them; and becauſe the value of that eſtate was eſtabliſhed by a large majority of competent and diſintereſted witneſſes.

They have acted contrary to law, for all and every of the reaſons aforeſaid.

They have alſo acted in direct contravention of law, by their novel and extraordinary reſolution, That no man is entitled to vote upon a freehold eſtate, becauſe he purchaſed it for that purpoſe!

We confidently maintain that by the laws of the land, every citizen poſſeſſed of a freehold of the value of twenty pounds, beyond incumbrances in this city, obtains thereby the elective franchiſe, that this board has not the authority to inquire into the motives which induced the purchaſe of his property—and that his right derived from the charter of this city, and the laws of the ſtate, can only be abridged

or modified by an act of the legiſlature. In depriving upwards of one hundred freeholders of their legal rights of ſuffrage, this board has exerciſed a ſtretch of authority arbitrary, unparalleled, and highly dangerous to the rights of the inhabitants of this city.

DECEMBER, 14th, 1801.

JOSHUA BARKER, HENRY VERVEELEN,
MANGLE MINTHORNE, WM. W. GILBERT.

It now became a ſubject of rumour, that the federal members had formed the reſolution to abandon their ſeats in the Council, and to leave the city to its fate. That by ſuſpending all public buſineſs, and withholding the appropriation of funds, an inſtant termination would be put to our inſtitutions of police. A determination ſo wild and extravagant even in the gentlemen who conceived it, was with difficulty credited. But time and enquiry gave confirmation to the report. From a ſpirit of conciliation, and with a view of preſerving the tranquility and harmony of the city, the mayor propoſed without delay the moſt liberal terms of accommodation. It was recommended that all the gentlemen, whoſe ſeats were conteſted, ſhould poſtpone their attendance, until their reſpective rights ſhould be determined. That to prevent the procraſtination attendant upon law proceedings, an accurate ſtatement of the caſes ſhould be made, and ſubmitted immediately to the judgment of the Supreme Court. That on account of the urgency of circumſtances, a deciſion ſhould be requeſted in the early part of January term, and that in the mean time no queſtion which had the ſemblance of party ſhould be taken in that board.

No anſwer having been received to ſuch propoſitions, in order to bring matters to that ſtate of certainty which became more and more neceſſary to the public repoſe, a meet-

ing of Common Council was ſummoned for the 18th of December. The republican members punctually attended, and not a ſingle *federal** gentleman appeared; at length all ſuſpenſe was terminated by the following letter, which was received and directed to the Mayor:

INSTRUMENT OF SECESSION.

Sir,

Having too much reaſon to think that a deliberate plan has been formed to violate the eſtabliſhed rights and uſages of the corporation, both by obtruding upon them perſons, as members of it, whom the Common Council have already determined to be not duly elected; and alſo, by your claiming, and, as we ſuppoſe, *uſurping* a right to vote in caſes where it never has been exerciſed by your predeceſſors; we feel it our duty to declare our intention to oppoſe theſe meaſures, and to ſupport what we conſider our juſt rights. A ſpirit of conciliation, and a wiſh to avoid the inconveniencies that might reſult from the ſuſpenſion of public buſineſs, would have induced us to form a temporary arrangement, conſiſtent with the preſervation of thoſe rights, until ſuch time as the queſtions that had ariſen might receive a legal deciſion. We are ſorry to find that our efforts for this purpoſe have been ineffectual, and that you perſiſt in conſidering Meſſrs. Cornelius C. Rooſevelt and Peter H. Wendover as members of the Common Council. After the reſolution of the board upon that ſubject, it would be improper for us to recognize or act with them as ſuch, unleſs their pretenſion ſhould receive a legal ſanction. *We ſhall, therefore, before our meeting with you in Common Council, expect to be ſatisfied that thoſe gentlemen will not be received as members of the board againſt our conſent, un-*

* The public will understand the sense in which I use the term *federal*.

til their right to ſeats in it has been judicially eſtabliſhed. We ſhall alſo expect that the uniform practice of the board will be conformed to, reſpecting the vote of the preſiding officer, until a legal deciſion to the contrary ſhall have been obtained. It is with reluctance that we ſubmit to the neceſſity of addreſſing you in this manner. *We are ſenſible that evils of conſiderable magnitude may reſult from the preſent ſtate of things;* but, as we are conſcious that we are doing our duty and defending our rights, we conſole ourſelves with the reflection that thoſe evils will not juſtly be imputed to us.

We are, with due reſpect, Sir,
Your obedient ſervants,

JOHN B. COLES, PHILIP BRASHER,
ROB. LENOX, JOHN NITCHIE.
SELAH STRONG, JOHN P. RITTER,
JAMES ROOSEVELT, PH. TEN EYCK.

It was thus imagined by thoſe gentlemen, that by holding a rod in terrorem over the heads of the republicans, and that by menacing them with a proſpect of diſorder and confuſion, they would at length be coerced into compliance. The city watch was to be aboliſhed—the lamps extinguiſhed—darkneſs and diſmay pervade our ſtreets—the midnight robber and the deſperate aſſaſſin were to prowl for prey and plunder unmoleſted—without a magiſtracy, and deſtitute of police, impunity was to be granted to every act of deſperation, and the hand of amneſty extended to every enormity and every crime. The houſeleſs child of poverty—the hoary-headed grandſire—decrepid matron—and ſtill more helpleſs infant of deſpair, all born to happier days and brighter proſpects, were, with unfeeling apathy and cold indifference, to be ſuddenly baniſhed from the only ha-

bitation and ſlender pittance which public charity had given them; feeble with infancy, infirmity or age—oppreſſed with hunger—the flood of life congealed by winter's freezing cold—to periſh at the gate of ſome more favored, not more deſerving being.

For ſome time at leaſt thoſe evils, perhaps, might not have been realiſed, the patriotiſm of the watch, more ſteady than that of the deſerting magiſtrates, would have induced them to adhere to their poſts*, and look to the reſtoration of public tranquillity for their accuſtomed compenſation; but, at a ſeaſon of the year when every want of life becomes moſt indiſpenſible and preſſing, was it convenient, or was it poſſible for this uſeful body of citizens, however willing in intention, to make ſuch ſacrifices at the ſhrine of duty? admitting the moſt favorable poſture of affairs that the public guard could have been maintained. What was to become of the city poor? Deſerted by the men who had always ſtiled themſelves the *ſteady advocates of order*, certain it was, that the proviſions for the alms-houſe could not laſt throughout the rigorous extremity of winter.

It was now the only alternative to ſupport the neceſſary inſtitutions of the city by voluntary contribution, or permit the contemplated ſcene of peril and diſorganization to enſue. Did the republicans deſire the little triumph of a party? Could they have viewed with pleaſure the puniſhment of their weak and thoughtleſs opponents? Or, did they ſteadily purſue the ſubſtantial welfare of their country? Had they wiſhed the gratification of a triumph, they might

* It is justice to this useful body of citizens to state that such was their determination; they would faithfully have performed their duties. Proud, haughty and insolent aristocrat! learn to reverence the virtues of the people. What a reproach to the deserting magistrates is conveyed by this circumstance!

have ſat ſilent ſpectators, and with eyes unmoved beheld the tempeſt of deſtruction gather, ripen, burſt with vengeance on the heads of their wretched and inconſiderate antagoniſts. There was not room for choice. Without heſitation ſome of our moſt reſpectable citizens inſtantly interpoſed the means of relief. Republicans were anxious to ſhare in the honours of patriotiſm. To their immortal honour let it be remembered, that the only diſappointment experienced on this emergency was by thoſe who wiſhed to contribute their funds or their credit, and had not the opportunity. A ſufficient capital was ſpeedily furniſhed to ſupply the wants of the winter, and ſhould the queſtions now depending remained unſettled in the ſpring, the citizens may reſt aſſured, that whatever other inconveniencies may be ſuſtained, the neceſſary police eſtabliſhments of the public ſhall be preſerved until the bleſſings of harmony and regular government are fully reſtored.

LYSANDER.

No. VII.

MEANS OF REDRESS.

All safety rests on honest counsels: these
Immortalize the statesman, bless the state.

YOUNG.

——————— Determin'd hold
Your independence; for that once destroy'd,
Unfounded, freedom is a morning dream
That flits ærial from the spreading eye.

THOMSON.

IT would be of little service to point out the existence of evils, without entering into a consideration of the remedies most proper to be adopted. In detecting abuses, without devising the redress which ought to be administered, we perform but a small proportion of our duties. The most valuable part is neglected or forgotten. At a crisis of affairs so important as the present, we are equally called upon to deliberate and to act. It is necessary that a decisive resolution should be taken, and in the language of Junius let it be remembered, "there is none so likely to be supported with firmness, as that which has been adopted with moderation."

The great object of our endeavours should be to amend, and not to destroy—to repair, and not to prostrate a fabric which may be rendered truly valuable. We should carefully distinguish between the abuses of an institution possessed of many excellencies, and one that is radically and universally defective. The charter of this city is susceptible

of being rendered an inſtrument of extenſive and permanent utility. It is the ground work of many of our moſt neceſſary and ſalutary eſtabliſhments; eſtabliſhments, under which we have long continued to flouriſh and to proſper.

If I may be indulged in the uſe of the metaphor, I conſider the charter as an houſe eminently calculated for the ſafety and convenience of its inhabitants. Though built upon a ſolid foundation, time has diſcovered ſome defects in the outlines of its plan, and rendered amendments neceſſary for its permanent preſervation. Experience and an advanced taſte in the ſcience of architecture, have ſuggeſted certain improvements, beneficial to its occupants. It is certainly accordant with the dictates of wiſdom, that ſuch amendments ſhould be made—they are alterations or additions to the ſtructure of the edifice, calculated to render it more commodious, valuable and ſecure.

He is no friend to the exiſtence of an inſtitution, who is anxious to retain the abuſes, to which it is ſubjected. In its preſent ſhape, our charter is ſickly and effeminate. Without the guardian interference of the patriot, it does not promiſe a long duration. From a continued ſeries of uſurpations, its principles have been diſtorted, and ſome of its moſt material proviſions entirely diſregarded. Inſtead of affording protection and ſecurity to the rights of the citizens, it has been converted into an engine to deprive them of their moſt valuable privileges.

The principal evils under which we at preſent labour, may be claſſed under the following diviſions:

I. A defective and partial repreſentation in the Common Council of the city.

II. The uſurpation of authority, with reſpect to the ſcrutiny of elections; and,

III. The want of a ſuitable proviſion to ſecure the appointment of freemen, and to render their political exiſtence independent of the will of the officers of the corporation.

The city repreſentation is at preſent almoſt excluſively confined to the freeholders; during the late charter election, only 150 perſons voted in the capacity of freemen. This is a practice equally repugnant to the proviſions of the charter and to the principles of our government. The right of election is the life of liberty—it is the root of every other privilege—the moment it is loſt, civil freedom becomes entirely extinct, and the citizen reduced to a ſtate of abject ſervility and dependence.

It is the fundamental principle of repreſentative governments, that the people are bound by laws, in reſpect of the conſent which they are ſuppoſed to give. This conſent is expreſſed by the voice of their repreſentative. Taxation and repreſentation are conſidered as correlative—he who is bound to contribute to the exigencies of the public is entitled to repreſentation in the body by which thoſe contributions are aſſeſſed.

No ſufficient reaſon can be aſſigned why the elective franchiſe ſhould be confined to the freeholders. It is not recogniſed by any ſound principle, nor is it to be found in any law. The city government was introduced for the general proſperity of the citizens; every inhabitant is equally bound by its regulations, and ſubject to its ordinances. The powers of the Common Council are complicated and extenſive; they are not confined to the ſuperintendance of real property—they extend to every ſubject and every de-

partment of police. Every houſeholder and inhabitant is perpetually ſubject to the ordinances of the Common Council, and is therefore entitled to the right of being repreſented.

It has indeed been artfully inſinuated, that it is proper the right of repreſentation ſhould be confined to freeholders, becauſe it is their property which is taxed by the Common Council. But, let it be conſidered, that the power of aſſeſſing taxes is only a ſingle branch of their general ſuperintendance; there are an infinitude of regulations in which the citizens at large are equally intereſted. Beſides, the Common Council taxes every houſeholder as well as every freeholder; and if our deciſion depended upon the ſingle circumſtance of taxation, the concluſion would be evident in favor of the general extenſion of the right. It is, moreover, worthy to be obſerved, that there are many intereſts in land entitled to equal attention with the freeholds. Much of our property lies in long leaſes; the houſes are built and the improvements made by the tenant; his intereſt is preſent, that of the landlord remote. It is the former, and not the latter, who is taxed. Again, even admitting that taxes are invariably laid upon the freeholds, yet the tenant is equally intereſted and equally entitled to repreſentation; for, by the general practice of the city, the tenant pays the taxes.

But the charter is explicit upon the ſubject; it inveſts the elective franchiſe in the freemen as well as the freeholders. Now, who are the freemen of the city, except its regular houſeholders and inhabitants? Not ſo, it is retorted; only ſuch as the mayor and four aldermen think proper to appoint.

Impoſſible, that ſuch ſhould be the genuine intention of the charter; but if ſo, it is time that the evil ſhould be cor-

rected. The rights of every citizen, ſtanding under the ſame circumſtances, muſt be equal. It is unjuſt that a power ſhould exiſt to refuſe to one what is granted to another. Such a ſyſtem of favoritiſm and partiality is too odious to be endured by a people who have the moſt diſtant conceptions of liberty.

As the charter now ſtands, it is liable to continual abuſe. Without a legiſlative interference, the rights of a majority of the inhabitants muſt always remain at the mercy of a few of the magiſtrates.

It is completely within their power to confine the repreſentation to the freeholders, or extend it at their pleaſure. This authority is equally formidable to the freeholders, and to the inhabitants at large. It, in effect, eſtabliſhes a dangerous controul over all. On the one hand they may refuſe to appoint freemen. Thoſe already made, muſt yield to death. The whole order of men becomes extinct, and the powers of the city confined to the proprietors of land. On the other hand, it is equally in their power to confer the freedom of the city upon the moſt abandoned, and diſſolute vagrants, without limitation, and thereby coerce the freeholders into a compliance with their views.

While the elective privilege is confined to freemen, the power of appointing them is, in other words, the power of appointing voters. It is an extraordinary practice that a legiſlative body ſhould deſignate the perſons who are to elect its members.

Whenever a mayor and four aldermen concur in ſentiment, they may appoint whomſoever they pleaſe as freemen. It is therefore completely within their power to decide the fate of charter elections. Such power may be gra-

nifying to the unthinking partizan. It muſt ever be obnoxious to the enlightened and independent patriot.

A few individuals may ſay to one citizen, "you ſhall be a freeman, becauſe you will vote in our favour." To another, "Thou ſhalt not be free, becauſe your ſuffrage would be given againſt us." Let us not rejoice at the exiſtence of ſuch power, becauſe to-day it may comport with our momentary intereſts. There is always an evil in the violation of principles; remember that it furniſhes a dangerous precedent, which to-morrow may be exerciſed againſt us.

There is only one remedy to eradicate the evil; that is, to render elections independent. The miſchiefs which have happened already may be repeated hereafter, unleſs effectual meaſures are taken to prevent them. It is neceſſary that the privileges of electors ſhould be defined by law, and no longer dependent upon the precarious proviſions of the charter. Let it be ſolemnly aſcertained who are entitled to the right, and let ſuch right be exerciſed without the poſſibility of becoming defeated by the violence of party, or the deſperate attempts of any intereſted body. Until ſuch ſalutary regulation takes place, we muſt remain in a ſtate of uncertainty and inſecurity—no power inferior to the legiſlature is ſufficient for the purpoſe—they alone can afford us ſubſtantial and beneficial redreſs.

2. The power of ſcrutiny which has lately been exerciſed, is ſo manifeſtly repugnant to every rational and ſober principle as to render a ſerious diſcuſſion of the ſubject an inſult to the underſtanding of the public. It would be, therefore, equally unneceſſary and improper to repeat the obſervations which have already been made. Let it be remembered, that there never was a power which afford-

ed greater licenſe, and greater temptations to abuſe. It is a power ungoverned by principle, uncontrouled by definite and rational rules of deciſion, wholly arbitrary and diſcretionary in its exerciſe, and enabling the Common Council, from views and motives prepenſe, to determine the fate of every election at their pleaſure. It is, therefore, indiſpenſibly neceſſary that a poſitive act of the legiſlature ſhould be paſſed, prohibiting its exerciſe in future. I alſo ſtrenuouſly recommend to my fellow-citizens, as the ſureſt ſafeguard of their rights, that they ſhould exert their laudable endeavours to obtain the legiſlative ſanction in favor of the following proviſions: 1ſt. That the elective franchiſe ſhall be ſecured, and extended to all the regular inhabitants of the city, within ſuch rational and liberal limitations as may be conſidered neceſſary for the public good. 2nd. That all elections ſhall be, in future, by ballot. 3d. That no citizen ſhall be permitted to vote out of the ward in which he reſides. 4th. That the right of challenge be given to every elector. And, 5th. That three inſpectors, or preſiding officers, be appointed; that all challenges be made at the time of the election, and decided by the inſpectors, under ſuch regulations as the legiſlature may adopt; and laſtly, That their returns, made in purſuance of law, be final and concluſive.

3d. By the letter of the charter, no man is permitted to purſue the occupations of life, under a certain and continual penalty, without firſt receiving the freedom of the city. This privilege reſts entirely in the diſcretion of a mayor and four aldermen; whenever they engage on different ſides of politics, it generally happens that it cannot be obtained; of courſe, the citizen is reduced to the neceſſity of ſuſpending his buſineſs, or of incurring repeated and inceſſant penalties; if it is adviſeable to retain this branch of our inſti-

tutions, either as a source of revenue or for any other purpose, justice would dictate that it should be legally defined who are entitled to the privilege; and that means should be adopted to secure its being granted to the individuals who are thus entitled to it.

Such only are the remedies proportioned to the extent and nature of the mischiefs. Subordinate measures would be trifling with the rights and interests of the public. If we are entitled to relief, let it be effectual. Let it be calculated to ensure a state of permanent freedom, order and tranquility. Before I conclude the present essay, permit me to consider the leading objections to a reformation, which are usually advanced.

I. THE FIRST great argument which is invariably resorted to, and indiscriminately applied, rests upon the perils and uncertainty which are said to be apprehended from every change. It has long been a fashionable practice to inveigh against innovations. Old manners and ancient habits, are the perpetual theme of blind and undistinguishing adulation. The unfledged politician and the flippant youngster, who can neither boast the years, nor the maturity of manhood, are taught with the readiness of parrots, and with equal discretion, to pronounce the cabalistical name of antiquity, in support of the greatest abuses and absurdities. The eye of argument is diverted from glancing upon the genuine merit of subjects, as if errors were consecrated by the revolutions of time—or outrage, imposture and imposition, sanctioned or concealed by the accumulated rust of ages!

If the age of institutions is the moral or political standard of their utility, let us travel to the remotest periods. We should derive our habits and our manners from the earliest times. We should study the laws and maxims of the ante-

diluvians--record their ſacred apophthegms of wiſdom--treaſure every precious veſtige and relic of their practices, and render the men, for whoſe wickedneſs the world was deluged, the univerſal legiſlators of mankind.

Let us inquire of theſe idolizers of antiquity, the preciſe ſenſe in which they conſider innovation? Shall we refuſe to heal a wound, becauſe its pain has been long endured? Muſt error or oppreſſion be conſecrated, becauſe they have obtained an aſcendency for a length of days? Are the ſciences and the arts, and all the inſtitutions of life to remain for ever ſtationary? Shall they not vary with the increaſe of knowledge, and purſue the progreſs of ſociety? The merits of an inſtitution depend not upon its age or its novelty, but the beneficial effects by which it is accompanied, and its adaptation to the ſituation and circumſtances of a community. Eſtabliſhments founded in wiſdom, will generally remain valuable. Experience will never fail to furniſh the evidences of their utility; but Experience, on the contrary, will equally bear witneſs againſt error, and direct us to purſue the path of judicious reformation. Every important truth, every valuable acquiſition to the general bank of ſcience, may be conſidered as innovations; and, if innovations were to have been prohibited, mankind would have continued enveloped for ever in the darkneſs of ignorance and barbariſm. Galileo was an innovator in aſtronomy---Boerhave and Hunter, in medicine---the diſcoveries of Newton were innovations in philoſophy---the American Revolution an innovation in politics.

Every new law is an innovation---all legiſlatures who perform their duties are innovators. In examining the true merits of a moral or political propoſition, the true queſtion to be diſcuſſed is, not whether it is antient, or

whether it is new; but, will it be productive of general utility?—is it calculated to promote the liberties, the happineſs and the proſperity of a people? It is one of the firſt duties of life to profit by the leſſons of experience. Whenever it is found that political ſyſtems no longer anſwer the purpoſes of their inſtitution---whenever it is diſcovered from practice that exiſting eſtabliſhments are inimical to the intereſts of a community, it becomes the right of the people, and the duty of the patriot, to introduce ſuch proviſions as are eſſential to the general welfare.

It has invariably happened in the hiſtory of every ſociety, that the greateſt abuſes have poſſeſſed ſtrenuous ſupporters, and powerful advocates. There is always a claſs of men who derive private emolument from public injuries —the loſs of the community is their gain. It is, therefore, to be expected ſo long as intereſt is an incentive predominant over patriotiſm, that thoſe who are benefitted by the continuance of abuſes will purſue every artifice, and exert their utmoſt influence, to deter the people from the purſuit of ſalutary meaſures.

> "Unblest by virtue, government a league
> Becomes, a circling junto of the great,
> To rob by law."

From this ſource originates the oppoſition which perpetually incumbers the path and impedes the footſteps of Reformation. Antiquity is interpoſed as the powerful ſhield for the protection of evils; Time is the uſual taliſman for affording perpetuity to Error and impunity to Guilt; the moſt valuable improvements are ſtigmatized with the name of *innovations*. Truth is conſidered as the offspring of impoſture, and he who nobly dares to cheriſh the intereſts of his country is proclaimed an enthuſiaſt, de-

rided as a madman, or branded with the odious appellation of an incendiary.

Neither perſonal conſiderations nor timorous reflections ſhould divert us from the calm, ſteady, and conſcientious purſuit of rectitude—combining penetration with fortitude, oppoſing reaſon and perſeverance to the reſiſtance of the corrupt and the clamours of the intereſted. Public intereſt ſhould conſtitute the polar ſtar, for the regulation of our conduct. Inflexibly adhering to the dictates of principle, it is the firſt duty to enquire what meaſures are moſt extenſively beneficial. It is the next with firmneſs to purſue them.

II. ANOTHER ſtanding objection againſt reform, is derived from the ſuppoſed inviolability of charters. This argument is poſſeſſed of ſome ſpecioufneſs, and is therefore entitled to an anſwer.

"Charters (ſaid Burke, in the days of his political integrity) are kept, when their purpoſes are maintained. They are violated, when the privilege is ſupported againſt its end and its object." Whatever ſanctity we may attribute to charters, ſtill there are other rights entitled to ſuperior conſideration. What is a charter but a grant of certain rights, privileges and powers to a particular body of men? You tell me the moment the grant is made, it is entitled to ſtrict obſervance—admitted as a general rule. I aſk you whether it is not attended with exceptions? Suppoſe a charter ſhould become injurious and deſtructive, "ſtill it is the privilege of the corporators." And will you ſet up the privileges of the corporators againſt the rights of the whole community? Suppoſe again, that, from a change of circumſtances or any other reaſon, the proviſions of a charter ſhould defeat the very purpoſes of its inſtitution.—Will you tell me that the privileges of the corporators are violated by a guardian attention to their intereſts? What is a corporation?—it is a body politic, poſſeſſing an artificial exiſtence. It is the

child and creature of the ſtate. The power by which it is created, can always controul, amend or diſſolve it. We ſhould ſteadily look to the end in view, and conſider a charter as the inſtrument for the attainment of that end. If ſuch inſtrument is found to be ineffectual for the accompliſhment of the purpoſe intended, it becomes neceſſary that ſuch alterations ſhould be made as will render it conſiſtent with the views for which it was eſtabliſhed.

But it is ſaid to be dangerous to admit of legiſlative interference, with regard to charters. This is a ſingular argument, and implies a want of confidence in the ſupreme powers of a ſtate. If confidence cannot be repoſed in the wiſdom and integrity of the legiſlature, then the principle muſt be entirely baniſhed from ſociety. A community muſt always remain competent to the ſuperintendance of its concerns. Thoſe general powers of ſuperintendance muſt be entruſted ſomewhere. They can be no where more ſafely depoſited than with the legiſlature. Subject to the conſtitution, all the rights and privileges of the citizen are intruſted with them—why not charter rights as well as others? You object "there is danger in the precedent." How does that appear? Has not the Engliſh legiſlature altered charters whenever it appeared proper or neceſſary for the benefit of the corporation, or for the general good? Has any inconvenience, or any miſchief reſulted from ſuch interpoſition? Has it rendered charters leſs ſolemn, permanent and ſecure? I admit that ſlight and tranſient reaſons will not juſtify an interference, but I contend that public and weighty reaſons demand it.

Why will you dwell upon the privileges of a charter?—In the caſe of a city, to whom do thoſe privileges belong? Are they not the general property of the inhabitants, intended for the purpoſe of univerſal protection and ſecurity? Suppoſe the charter ſhould be defective in every particular

requiſite for the attainment of that end. Shall it not receive inſtant and effectual reformation?

You tell me that "charters are ſolemn inſtitutions—they are not to be violated or infringed—ſeated upon an adamantine baſis—they riſe ſuperior to every emergency, conſtituting property and creating privileges, the faith and honor of the legiſlature are pledged for their ſupport." This is wild and chimerical doctrine. Charters indeed, are privileged inſtitutions; yet they muſt ſometimes give place to ſuperior conſiderations. But in the preſent caſe, I aſk not the violation of property, but its protection. I requeſt not the deſtruction of privileges, but their preſervation. What is more ſacred than public liberty? What conſtitution, and what ordinance, is more ſolemn than the rights and happineſs of a community? Where is the conſummate logician who can perſuade me that the great principles of ſocial juſtice, eternal and univerſal in their nature, avail not when oppoſed by the wax and parchment of a charter?

But it has been ſaid that our charter is of more than ordinary ſolemnity. It has been imagined by ſome, that it is even ſuperior to the authority of the legiſlature. The foundation of this extraordinary doctrine, has been occaſioned by a haſty miſconception of a clauſe in our conſtitution, which has not the moſt trivial relation to the ſubject. The only operation of the paſſage in queſtion is to prevent a forfeiture of the inſtrument, on account of any miſconduct committed within a given interval of time. The moſt extenſive wildneſs of conſtruction cannot extend its operation farther. It cannot interpret the ſentence into language of general confirmation.

I readily admit a diſtinction between public and private charters; that the former embrace the general, and the latter individual intereſt. Private charters convey, with ſufficient

accuracy, all the ideas incident to property. When they are granted for the purpoſes of banking, or to unite a ſufficient capital for the beneficial purſuit of any branch of trade, in theſe caſes, their object is, the private emolument of the corporation. Whatever intereſt the public is ſuppoſed to derive from thoſe eſtabliſhments, is remote and indirect. The object of the legiſlature in conſenting to thoſe grants is, to facilitate and encourage private induſtry and enterprize; ſuch grants may, therefore, be viewed in the nature of private property, and, within a certain limitation, the faith of government may be conſidered as pledged for their ſupport.

I ſay within a certain limitation, becauſe I never ſhall admit that, even in the caſe of a private charter, the pledge of government is abſolute and unconditional. That ſuch a charter is forfeitable by miſuſer, is a poſition which has never been queſtioned. That every legiſlature muſt retain its general powers of ſuperintendance, with regard to the eſſential intereſts of a community, is another poſition equally incontrovertible. Every private eſtabliſhment muſt give place to the great conſiderations of public policy or juſtice. Whenever it is diſcovered that a private charter is materially and manifeſtly repugnant to the general intereſts of a ſtate, it is the right—it is the duty of government to interpoſe its ſovereign juriſdiction. Such right of repeal muſt be conſidered as incident to all charters. In England the power of parliament, upon the occaſion, has never been denied. The king, by his ſole prerogative, may create a corporation; but it requires the power of the legiſlature to diſſolve it. There is a tacit and implied condition annexed to all charters. That their diſſolution muſt enſue, whenever the important intereſts of ſtate require ſuch event. But on the other hand, I equally maintain, that legiſlatures ſhould proceed with the utmoſt delicacy

and caution, with reſpect to private charters: nor ſhould they interfere with ſuch rights, unleſs demanded by the moſt peremptory neceſſity, or requeſted by the application of the corporation itſelf.

With reſpect to applications on the part of corporations, let me indulge a ſingle obſervation. It frequently happens that differences ariſe between the governors and the members of thoſe inſtitutions, that is between thoſe who are appointed to manage their concerns, and thoſe in whom the ſubſtantial intereſt is veſted. In caſes then of manifeſt abuſe, ſhall it be maintained, that the members of an inſtitution are deſtitute of remedy. I ſtate that emendatory proviſions are eſſential to the ſecurity or to the very exiſtence of the inſtitution. The members at large complain of the injuſtice of their agents. They wiſh to ſtate the miſconduct of their truſtees—they cannot petition formally, that is, they cannot produce a writing, ſolemniſed under their common ſeal. Thoſe agents or truſtees refuſe to affix the ſignet to a paper adverſe to their intereſts. Shall there be a defect of juſtice, becauſe no application is made by the very individuals, whoſe fraud and peculation is rendered the ſubject of complaint? Imagine the caſe of a bank, the moſt inviolable of all corporate eſtabliſhments. Would the legiſlature be deaf to the repreſentations of a numerous majority of ſtockholders?

But however delicate our ideas may be, with reſpect to the inviolability of private corporations, it would be improper to extend that extreme delicacy towards public charters. Thoſe caſes ſtand upon a footing eſſentially different. Our nice and ſcrupulous attention to private charters, proceeds from the vigilant and jealous ſolicitude with which we guard the rights of property. But on the contrary, inſtitutions, ſtrictly public, ſuch as the charter of a city,

bear not the moſt diſtant relation to property. They are entirely eſtabliſhments of government and police. In reaſoning and in legiſlating upon the ſubject, we are ſtrictly to conſider them as ſuch. We are ſteadily to adhere to the end in view. That end is ſolely to promote the proſperity of the city. No alteration of the charter interferes with the enjoyment of private property. If the exiſting proviſions of the inſtrument, are inadequate or repugnant to the attainment of its object, no imaginable inconvenience can reſult from its amendment.

It has alſo been maintained, that the legiſlature cannot, or ſhould not, interfere with the city charter, unleſs upon the application of the Common Council, ſanctioned by the magic influence of the public ſeal! Of all abſurdities which ever entered a bewildered brain, this doctrine is the moſt palpably abſurd. What! my countrymen, when we complain of the miſconduct, when we experience the oppreſſion of a public body, are we ſeriouſly told, that the doors of redreſs are ſhut upon us, that we are not to approach the guardians of liberty and law, becauſe that very body from whom we ſuſtain the injury will not unite in the petition? Suppoſe a patriotic majority in that board ſhould be withheld from us, is it to be ſuppoſed, that the men who live and flouriſh by the public wrongs will apply for their ſuppreſſion? The queſtion is between the city and the majority of the Common Council. It is a complaint of the people againſt the uſurpation of their magiſtrates. Are the violators of public rights to become the petitioners for public juſtice? Deſpoilers and yet protectors of their Country's liberties! Strange inconſiſtency! Moſt marvellous contradiction! Feeble, alas! would be the hopes which were founded in their interpoſition. Our only refuge is in the independence of the people and the patriotiſm of the legiſlature. The police of the city is the general

concern of all its inhabitants. The councils of the ſtate will liſten with attention to their united repreſentations.

It is eſſential to the intereſts of the people that the elective privilege ſhould be ſecured by permanent legal proviſions. The rage of party, like the malignant influence of Sirius, is ever deſtructive to human happineſs. The evils which have been inflicted at one ſeaſon may again be experienced at another. Juſtice demands, that the rights of the community ſhould be vigilantly guarded againſt a repetition of abuſes. If the freemen of the city ſhould be reſtored by a preſent adminiſtration, what is to prevent a total annihilation by their ſucceſſors? There is no ſafety in government, while the rights of the conſtituent remain dependent upon the will of his repreſentative. There is no ſtability in the privileges of the city, while the exiſtence of a conſtituent branch of its incorporation is ſubject to the pleaſure of the Common Council. If our ſyſtem of repreſentation is juſt, let it be extended to the councils of the city. Are the duties of an alderman more important than thoſe of the legiſlature? Are the deliberations of the city council more material to the public happineſs, than thoſe of our aſſembly, or the Houſe of Repreſentatives of the Union? What ſubſtantial reaſon can be aſſigned, why the citizen who is entitled to repreſentation in the national councils, ſhould remain unheard and unrepreſented in the ſubordinate councils of the city? What ſolid arguments ſhall eſtabliſh the propriety of the poſition—that the ſuffrages of a majority of the inhabitants ſhould depend upon the arbitrary pleaſure of a few of the magiſtrates?

We ſhould be faithleſs to ourſelves and to poſterity, if we trifled with the ſubject, if we conſented to any modification of an authority radically unjuſt, or accepted of any terms inferior to a total and ſalutary reformation. The

rights of the people cannot be made the subject of barter or compromise. The duties we owe to our country are solemn and impressive. Upon the right of representation the whole system of our liberties depends. It is the living soul which animates and strengthens the body of our freedom.

A court of justice may settle the rights of disputing candidates. The legislature alone can prevent a repetition of the evils we have experienced, or heal the wounds of a violated charter. Left without a government, destitute of a regular police—We have no means of appointing inspectors for the ensuing election. There is very little probability of a timely decision of the rights of the candidates. Unless the legislature interfere, the city will inevitably lose its representation. We are this day called upon, by a voice too powerful to be resisted, to support a right which is essential to the preservation of our liberties, laws, and constitutions. Our most essential institutions are suspended. Every social tie, every important privilege, is at stake. Let us hasten to the legislature, as the guardians of the public safety. With the union, perseverance, and alacrity which should ever distinguish freemen, let us, faithfully and honestly, perform our duties to our country.

LYSANDER.